93-458

No.

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1993

L. Shieh, et al.,

Petitioners,

vs.

SUPERIOR COURT OF THE
STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES

Respondents.

Andrew Castellano, et al.,
and
William Highberger, et al.,
Real Party In Interest.

Petition for Writ of Certiorari to the Supreme Court of the State of California

PETITION FOR WRIT OF CERTIORARI

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105 pp

THE QUESTION PRESENTED FOR REVIEW

I. As a matter of first impression, whether California vexatious litigant statute (California Code of Civil Procedure ("CCP") Section §391 et seq.) in general, and its 1990 amendments (subdivisions §391(b)(3), (b)(4) and §391.7) in particular, unduly violates a pro se litigant's rights of equal protection and due process as guaranteed by the Fifth Amendment and the Fourteenth Amendment of the U.S. Constitution?

II. Whether the trial court's sanction orders made by a disqualified judge against the petitioners and their counsel in this action in violating Section §128.5 of the CCP, and thus infringing petitioners' constitutional rights of due process and equal protection?

ALL PARTIES TO THE PROCEEDING

PLAINTIFFS and PETITIONERS:

SAY & SAY, a California corporation and LIANG-HOUH SHIEH, an individual, and JAMES L. ANDION, counsel for Plaintiffs and Petitioners.

DEFENDANTS and RESPONDENTS:

1. In Christopher case:

O'MELVENY & MEYERS AND ITS GENERAL PARTNERS, GIBSON, DUNN & CRUTCHER AND ITS GENERAL PARTNERS, AND RICHARD TARLOW.

2. In Castellano case:

ANDREW CASTELLANO; FRANCISCA N. ARAIZA; GERALD HOLLINGSWORTH; IMPERIAL SAVINGS; HOUSEHOLD BANK.

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IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 1993

L. Shieh, et al., Petitioners,

vs.

Superior Court of the State of California, County of Los Angeles, Respondents,

Andrew Castellano, et al.,

and

William Highberger, et al.,

Real Parties in Interest.

To the Honorable William Rehnquist, the Chief Justice, and Associate Justices of the Supreme Court of the United States.

Say & Say, a California corporation ("Company"), and L. Shieh, the petitioners herein, pray that a writ of certiorari be issued to review the judgment of the Supreme Court of the State of California entered in the above-entitled case on July 28, 1993.

I. OPINION BELOW

The opinion of the Supreme Court of California dated July 28, 1993, which denied the petition for review is unreported and is attached as petitioner's Appendix A. The judgment of the Court of Appeal dated July 15, 1993, which denied the petitioner's petition for writ of mandate is attached as Appendix B. The Minute Order entered by Judge Edward Kakita of the Superior Court of Los Angeles County is attached

as Appendix C, in which Judge Kakita declared petitioner Shieh to be a vexatious litigant under California Code of Civil Procedure section §391(b)(3) and (b)(4). The order of the Superior Court of Los Angeles County dated June 28, 1993, imposed more than $100,000.00 sanctions against Petitioner Shieh and his counsels of record for their good faith effort to correct the trial court's mistakes, and inexplicably issued yet another order to show cause re: contempt against Petitioner Shieh's counsel James L. Andion, to be heard on July 27, 1993, is attached as Appendix D. The order of the Superior Court of Los Angeles County dated June 3, 1993, which dismissed the case as to Plaintiff Shieh, is attached at page 32. The order of the Superior Court of Los Angeles County dated July 29, 1993,

which purportedly dismissed the case as to Company, on the unsubstantiated and false charge of alter ego, which results in the declaration of the Company as a vexatious litigant ["VL"], is attached as Appendix E.

II. JURISDICTION

The judgment of the Supreme Court of California (Appendix A) was entered on July 28, 1993, which denied Petitioners' petition for review in a case involving constitutional issues. Under 28 U.S.C. §1257(a), 28 U.S.C. §1651(a) and Supreme Court Rule 10.1(c), this Court will review a state judgment by writ of certiorari, if "a state court... has decided an important question of federal law which has not been, but should be, settled by this court, or has decided a

federal question in a way that conflicts with applicable decisions of this court."

III. FEDERAL LAWS INVOLVED

A. Section §391 et seq. of California Code of Civil Procedure ("CCP"), in general, and CCP §391(b)(3) and (4), and §391.7, in particular, are unconstitutional in that they violate a litigant's constitutional rights of equal protection and due process, as guaranteed by the Fifth Amendment and Fourteenth Amendment of the U.S. Constitution.

B. The trial court sanction orders, made on the irrebutable presumption of guilt and that Dr. Shieh was in pro per, when he in fact was/is represented by

counsel at all relevant times and in all cases, and that Dr. Shieh is a vexatious litigant, and thus all actions of Dr. Shieh's counsel are frivolous, are invalid and violated Petitioners' right to due process, and equal protection.

C. The trial court sanction orders imposed on Petitioners and their counsel is in violation of California Code of Civil Procedure ("CCP) §128.5 and an infringement of petitioners' due process and equal protection rights.

IV. STATEMENT OF CASE

Say & Say, L. Shieh v. Castellano, et al, ("Castellano Case"), L.A. Sup.Ct. Case No. BC 059833, and L. Shieh, Say & Say v. O'Melveny & Meyers, et al. ("OMM Case"), L.A. Sup.Ct. Case No. BC 054981, were reassigned to Judge Edward Y.

Kakita along with other cases.

Judge Kakita indicated that he would get rid of all of Petitioners' cases, and he did exactly what he said. The issue of Judge Kakita's automatic disqualification is now pending in this Court, case No. 93-295.

On November 17, 1992, Judge Kakita entered a minute order declaring petitioner Shieh as a vexatious litigant under CCP §391(b)(3) and(4), even though petitioner Shieh has never appeared in the court to argue his own cases, has never spoken with opposing parties/counsels and has always been represented by lawyers in the Castellano and OMM actions and in all other actions. Appendix C.

On June 3, 1993, following his less than hospitable attitude towards petitioners, Judge Kakita ordered that

both actions be dismissed with prejudice, in violation of CCP §391.2 Appendix D.

On or about June 8, 1993, petitioners filed their third Notice of Appeal. Appendix F.

On June 28, 1993, Judge Kakita imposed more than $100,000.00 sanctions against petitioner Shieh and his former attorneys. The sole basis for such hatred and outrageous sanctions is based on defendant Highberger's motion, that Highberger's one motion and one reply paper which he had the audacity to claim cost more than $100,000. Appendix G. On September 8, 1993, Judge Kakita could not grant Highberger's motion for additional sanctions because it was woefully inadequate in setting forth any factual basis. However, instead of denying the motion, Judge Kakita

recommended that Highberger and Castellano supplement their deficient declarations giving them until September 29, 1993 to file and serve supplemental declarations. Petitioners have claimed that Highberger induced petitioners' former lawyers to breach their professional and fiduciary duties. See, Appendix H. The California state trial court judge granted deferential and preferential treatment to defendant Highberger by not denying the motion for procedural deficiencies, but instead allowing him and petitioners' former lawyers additional time to correct and supplement their papers, because Highberger is an attorney in the law firm of Gibson, Dunn & Crutcher ("GDC") who represents O'Melveny & Meyers ("OMM"), two of the largest law firms in Los Angeles.

V. REASONS FOR GRANTING WRIT

A. CCP Section §391 In General and CCP §391(b)(3),(4) and §391.7 In Particular Are Unconstitutionally Vague, Ambiguous and Overbroad and Thus Violating a Litigant's Rights of Equal Protection and Due Process.

1. HISTORICAL BACKGROUND OF CCP §391.

The full text of CCP §391 is attached hereto as Appendix I.

CCP §391 ("Vexatious Litigant" statute) was first added into the California Code of Civil Procedure in 1963. (Stats.1963, Ch.1471,s1,p.3038) Stafford v. Russell, et al., 201 Cal. App. 2d 719, 20 Cal. Rptr. 112. The

1963 version of CCP §391 was modeled on a similar section in California Corporation Code (then §834, now §800, on shareholder's derivative actions), which in turn was first adopted in California in 1947.

The §834 type of statute restraining shareholder's derivative litigation against corporations was first recognized by the U.S. Supreme Court in 1949 in Cohen et al. v. Beneficial Industrial Loan Corporation, 337 U.S. 541, 69 S. Ct. 1221 (1949), and by the California Supreme Court in Beyerbach v. Juno Oil Co., et al., 42 Cal. 2d 11, 265 P.2d 1 (1954).

Among other things, in comparing the 1963 versions of §834 and §391, we find that both statutes set a 30-day limitation for the defendant to file the motion for securities from the

plaintiff. §834 further set up a ceiling limit of $15,000.00 dollars for the amount of security to be posted by the shareholder plaintiff. However, Judge Kakita requested petitioner Shieh to post more than a $40 million security in the OMM case, and more than $500,000 security in the Castellano case, both within 10 days from May 24, 1993; and dismissed both actions on June 3, 1993. The security of more than $40 million in one case could be the highest in American legal history.

Judge Kakita has uniformly granted all defendants' motions and denied all petitioners' motions in both cases and all other cases, regardless of their merits. Judge Kakita is supported in decisions in this case by Judge Millard, assistant presiding judge of the Orange County Superior Court, and by Division

One of the Court of Appeal, Second Appellate District. The Spencer-Millard-Kakita courts have controlled petitioners' case and have retaliated against petitioners leaving petitioners slight recourse because the California Supreme Court granted petitions for review in less than two percent (2%) of civil cases annually. Division One of Court of Appeal has attempted to control all of petitioners' cases. Appendix X. Division One has imposed an irrebutable presumption that petitioners' causes of actions are always wrong and that all petitioners' cases to them are the same. Accordingly, Division One has consistently denied a writ of mandate on Judge Kakita's two body attachments without bail, petitioners' lawyers' contempt, in violation of double jeopardy and right to exercise a

peremptory challenge, and on more than $100,000 in sanctions.

As a matter of first impression, neither the California Supreme Court nor the U.S. Supreme Court have ever made any decisions upon the validity of the new 1990 version of CCP §391.

2. THE CONSTITUTIONALITY OF THE NEW 1990 VERSION OF CCP §391.

The new 1990 version of CCP §391 has broken the mold of the old constitutional version of §391.[1]

[1] The Court of Appeal has correctly summarized the new features of the 1990 amendments of §391: "... the Legislature expanded the definition of 'litigation' to include civil actions in federal courts, broadened the definition of "vexatious litigant" to incorporate the types of conduct set out in subdivisions (b)(3) and (b)(4) of section 391, clarified that the definition of "plaintiff" includes attorneys acting in propria persona, ... and empowered trial courts to enter prefiling orders prohibiting pro se vexatious litigants from filing new

The "vexatious litigant" standards are thus much more vague, uncertain, ambiguous and contradictory than ever because Judges Spencer, Millard, and Kakita have sought to rewrite the law and Constitution to obtain their intended result against petitioners. The court's power to declare a person to be a "vexatious litigant" is overbroad, arbitrary and irrational.

In the most recent decision, Division One of the Second Appellate District of the California Court of Appeal, for the first time in American history: (1) declared a "defendant", who was/is represented by lawyers in all cases at all relevant times, a "vexatious litigant"; (2) declared a

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actions without prior court approval". Camerado Insurance Agency,Inc. v. Superior Court (Stolz II.), 12 Cal. App. 4th 838, 16 Cal. Rptr.2d 42 (1993). (Emphasis added.)

California corporation a vexatious litigant, (3) declared petitioner Shieh's past and current 20 law firms and unknown number of future lawyers "puppets" of petitioner Shieh; (4) prohibited all of Shieh's current and future lawyers from filing new litigation, new writ petitions and new appeals; (5) determined the merits of all of Shieh's cases through Spencer's court's self-creation of totally phony stories in violation of CCP §391.2; and (6) ordered and advised all Court of Appeals and all lower courts to dismiss all petitioner Shieh's cases and retaliate against petitioner Shieh. Although this may seem incredible, we ask the Court to direct its attention to Appendix X. The California court emotionally and discriminatorily violated petitioners' constitutional

rights of equal protection and due process of law. Following are some constitutional issues posed by subdivisions (b)(3) and (b)(4) of §391 and §391.7, as applied particularly in the instant actions.

a. CCP Section §391(b)(3)

CCP §391(b)(3) defines a person to be a "vexatious litigant" if he "[I]n any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay".

The core issues of this subdivision include the meaning of the words like "in any litigation", "in propria

persona", "repeatedly", "unmeritorious", "papers" and "unnecessary delay".

Does "in any litigation" mean in the very litigation where §391 is considered to be applied, or in any one of the previous, totally unrelated litigation cases where the plaintiff in this present proceeding happened to be a party involved? Does "in pro per" also include a litigant who is represented by a lawyer? What is the standard of "repeatedness"? In the instant OMM action, for example, petitioner filed this action in or about June, 1992; and Judge Kakita made the "vexatious litigant" declaration on November 17, 1992. Between July and November 17, 1992, plaintiffs' "lawyers" only filed the first amended complaint, and approximately two opposition papers opposing two vexatious litigant motions.

On the other hand, defendants filed at least 19 motion papers to request the court to declare plaintiff Shieh to be a vexatious litigant ("VL"). Why was only defendants' counsel absolved from the effects of the stay? In fact, it is the defendants who are engaging in §391 motion tactics to cause unnecessary delay. Apparently, Judge Kakita would have been erred in declaring Shieh a VL under CCP §391(b)(3) in this very action because by that time none of plaintiffs' papers was repetitive nor were they totally without merit. Most importantly, petitioner Shieh was/is not in pro per and all papers were prepared and filed by his lawyers.

There is no definition as to what constitutes "papers", and what are "unmeritorious" and "unnecessary".

Another interpretation of the

application of §391(b)(3), as suggested by the defendants and apparently as relied upon by Judge Kakita is that "in any litigation" means in any state or federal litigation other than in this very action.

If that is the correct interpretation, then CCP §391(b)(3) would be in serious conflict with subdivision §391(b)(1): In CCP §391(b)(1), to define a VL, there are time limitations (immediately preceding seven years), litigation number limitations (at least five litigations), and their result limitation (finally determined adversely). In subdivision (b)(3), however, there appears to no time limitation, one litigation seems to be enough to determine a VL, nor is there even any requirement that the litigation

be finally determined adversely to the plaintiff.

To this extent, CCP §391(b)(3) not only overlaps with and supersedes CCP §391(b)(1), but also breaks its mold of constitutional certainty.

b. CCP Section §391(b)(4)

Under §391(b)(4), a "vexatious litigant" is a person who "[H]as previously been declared to be a vexatious litigant by any state or federal court in any action or proceeding based upon the same or substantially similar facts, transactions, or occurrence".

The interpretation and application of this subdivision have caused great confusion and uncertainty. Arguably, CCP §391(b)(4) is inconsistent with the

other three subdivisions of subsection (b): If a person is qualified to be a VL under either subdivision (b)(1), (b)(2) or (b)(3), but has not yet been so declared by a state court, then subdivision (b)(4) does not apply. However, if such person has already been declared to be a VL, whether or not correct or final, then there is no need to apply subdivision (b)(4) one more time because, under CCP §391.7, one declaration by a state court is good enough to restrict a VL from filing new litigation for his whole life.

The only logical inference left, therefore, is that the term "any state or federal court of record" in subdivision (b)(4) means not only the state or federal courts in the state of California, but also includes all of the state or federal courts of record in all

other 49 sister states, so that, once a person has been declared to be VL under procedure of the federal statutes or the statutes of other 49 sister states, such person will be declared a VL once again under CCP §391(b)(4) if he brings new litigation in a California state court based upon the same or similar facts, transaction or occurrence.

The logical interpretation has resulted in very absurd consequences. CCP §391 is in fact creating double or multiple standards and double or multiple procedures in determining a VL: On the one hand, it is the CCP §391 standard under subdivisions (b)(1), (b)(2) and (b)(3); on the other hand, it is another unknown standard and procedure of vexatious litigant under the federal laws, or the laws of any other 49 sister states, or their local

rules.

To the best of petitioners' knowledge, neither the federal laws nor the statutes or local rules of any other 49 sister states contain any same or similar "vexatious litigant" statute as CCP §391. Therefore, a "vexatious litigant" is very easily to be "declared" by a federal court or a sister state court under quite different standards and criteria. As a matter of fact, Judge Kakita declared petitioner Shieh a VL under CCP §391(b)(4) simply because a federal district judge, in L.C.Hsieh and L. Shieh v. Christopher, et al., U.S.D.C., C.D. Cal., No.91-6968-MRP(Sx), addressed a "comment" to petitioner Shieh's "lawyer" that it is "ridiculous" to sue all general partners under §15015 of the California General Partnership Act. A "comment" directed to

petitioner Shieh's lawyer became a "declaration" of petitioner Shieh as a vexatious litigant. This is contrary to the existing law. The same comment was emotionally followed by trial court Judge Millard, and then by appellate Judge Spencer. A "comment" upon a litigant's "lawyer" has destroyed all of petitioner Shieh's fundamental rights. This Court should determine the legality and the constitutionality of CCP §391(b)(4).

The California Court of Appeal declared petitioner Shieh to be a "vexatious litigant" under §391(b)(4) simply because, in PSJ Corp. and Percy Chien v. Harry Hathaway, et al., U.S.D.C., C.D. Cal., No.91-6714-RG(Ex), Federal District Judge Tevrizian commented upon a third party's disqualification against District Judge

Gadbois to be "wholly frivolous and a sham." The comment is not directed to petitioner Shieh, and petitioner Shieh was not even a party in that action at all.[2]

Such federal judges' comments upon a third party had amounted to a "declaration" under CCP §391(b)(4). The California Court of Appeal, Division One overreached to the point of playing the role of the legislature to rewrite CCP §391. The California Court of Appeals acted analogously to convicting

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[2] Shieh was the counsel for the plaintiffs in this action. In Camerado Insurance Agency, Inc. v. Superior court (Stolz II), (1993) 12 Cal. App. 4th 838, 16 Cal. Rptr. 2d 42, the California Court of Appeal for the Third Appellate District interpreted the application of CCP §391 that "A more plausible reason for the amendment's limitation to attorneys "acting in propria persona" is to make plain that section 391 does not apply to opposing counsel, who is also a person who "commences, institutes or maintains a litigation or causes it to be commenced, instituted or maintained," and thus otherwise would fall within the definition of 'plaintiff'".

petitioners to a death knell based on a non-related third party's innocent actions. For example, PSJ Corporation's rights, a non related third party, has been seriously impaired.

In fact, §391(b)(4) could name any person a VL at any time, under any circumstances, and for any reasons or no reasons, that could be imagined by a judge.

c. CCP Section §391.7

Subdivision (a) of §391.7 allows a state court to "enter a pre-filing order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed".

(Emphasis added).

The words "in the courts of this state" are fatally vague and uncertain. Is it constitutional to allow a municipal court to restrain a VL person from filing new litigation in a superior court? Does it include the federal courts in California? As indicated above, the 1990 amendments intend to expand its application to the federal courts. Even if by its plain meaning CCP §391.7 might not directly apply to the federal courts, under the rule of Erie R. Co.v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, (1948), federal courts in the state of California will apply California state law, including CCP if applicable, in the diversity of citizenship cases. Therefore, §391.7 will possibly be applied to the federal courts.

In Donovan v. City of Dallas, (1964) 377 U.S. 408, 84 S.Ct. 1579, the U.S. Supreme Court ruled that "State courts are completely without power to restrain federal-court proceedings in in personam actions, even though prohibition is addressed to parties rather than to the federal court itself". Thus, §391.7(a) is contradicting the U.S. Supreme court's rulings in that it might unduly restrain a "VL" litigant from filing new actions in a federal court, at least in the diversity of citizenship type of cases.

Subdivision (a) of section §391.7 is also unconstitutional in that such a pre-filing restraining order is lasting permanently for life. Once a person has been declared to be a VL by any court of record, there is no procedure or statute to lift the restraining order, or to

suspend its application. Such penalty sounds like a death penalty and even much worse than a life-term imprisonment because, even a sentenced criminal is entitled to certain relief remedies such as parole, probation, conditional release, rehabilitation, pardon, etc. CCP §391.7 provides none of the other remedies to a declared "vexatious litigant" in his whole life.

Subdivision (b) of CCP Section §391.7 also poses serious problems. First of all, subdivision (b) requires the presiding judge to permit the filing of "new litigation" only if it appears that the litigation has merit. There is no explanation whether "merit" means the same as "reasonable probability" to prevail as used in Section §391.1 and Section §391.3, or if it requires a higher threshold standard. At such

early stage of litigation, the only proof of "merit" will be a VL's complaint. The intended defendant is not yet informed of the litigation. How could the presiding judge appraise the "merit" of the case without discovery? This makes a decision impossible when the "conspiracy" is alleged and when the evidence is under sole control of defendant as in the instant actions.

Furthermore, subdivision (b) of Section §391.7 allows the presiding judge to condition the filing of the new litigation upon the furnishing of security, even if the new litigation has merit. A defendant who retains a large law firm, such as defendants GDC and OMM, would require more security than a solo practitioner. A plaintiff whose case has merit but has financial difficulty is deprived of his

fundamental rights to access to the court, as part of his due process right.

On the other hand, under §391.3, a vexatious litigant is required to furnish security only when defendant has proved that the VL plaintiff has no reasonable probability to prevail against the defendant. This inconsistency would cause even harsher prejudice to a litigant in pro per who was declared to be a VL several decades ago and whose complaint is not as well written as a professional attorney's work, even though he has a good case.

The California Court of Appeal, Division One, i.e., the Spencer court, even extended the meaning of "in pro per" to a litigant's lawyer, Appendix J. The Spencer court prohibits petitioner Shieh's current and future lawyers from filing any litigation, in violation of

petitioner Shieh's right to counsel and in discriminating against petitioner Shieh. The Spencer court further extended the meaning of "new litigation" to include "writ and appeal", and of "VL" to non-natural persons, such as the Company, a California corporation, even if that Company is not owned and not controlled by petitioner Shieh. Petitioner Shieh is not a director or officer of the Company either. He is only one of several attorneys for the Company. Appendix K.

The California Court of Appeal has acted beyond its "original jurisdiction" as a reviewing court and in violation of the separation of powers.[3] It has

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[3] In United States, et al.v. Madison D. Locke, et al., (1985) 105 S.Ct. 1785. 471 U.S. 84, this Court held that: "The fact that Congress might have acted with greater clarity or foresight does not give courts a carte blanche to redraft statutes in an effort to achieve that which Congress is perceived to have failed to

attempted to re-write the statute in question in order to reach its holding. This problem started from the superior court, which was then exaggerated by the California Court of Appeal, Spencer court.

B. The Trial Court's Order of Sanctions of More Than $100,000.00 Is in Violation of CCP §128.5.

In addition to the acts of the California courts stated above, the California court sentenced petitioner Shieh's lawyer to 5 days in jail, and

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do, nor is the judiciary licensed to attempt to soften the clear import of Congress' chosen words whenever a court believes those words lead to a harsh result." Id, fn. at 84.

In Thomas Freytag, et al. v. Commissioner of Internal Revenue, (1991) 111 S.Ct. 2631, 115 L.Ed.2d 764, this court held that "Courts are not at liberty to create a statutory exception where Congress has declined to do so". Id, at p.2361.

sanctioned petitioner Shieh and his former lawyers more than $100,000 on June 28, 1993, and defendants sought sanctions of nearly $200,000 on September 8, 1993. The motion and declaration for sanctions were so deficient that the judge gave movants additional time to correct them, instead of denying the motion. The California courts were manipulated by those large law firm defendants.

As a general rule, sanctions under CCP §128.5 may not be awarded except upon a finding of bad faith. In Liamas v. Diaz (1990) 218 Cal. App. 3d 1043, 267 Cal. Rptr. 427, the court of appeal stated that to award sanctions against party or a party's attorney, there must be an assessment of "subjective bad faith" in addition to finding that particular "actions or tactics was

frivolous". Besides, to attribute an action to be "frivolous", it must be "totally and completely without merit". See, Llamas, supra. The court in Llamas declined to impose sanctions upon plaintiffs because, although the action was without merit, it was not instituted in bad faith.

In this action, the sanctions imposed by the trial court should be vacated since there is no finding showing petitioners and their attorneys have conducted action in "bad faith". See, June 28, 1993 Minute Order. What petitioners and their attorneys want to do is simply to correct, in good faith, the serious mistakes made by the trial court, through misrepresentations made by the defendants. They simply proved that (1) petitioner L. Shieh was/is not in propria persona; (2) Shieh is not a

vexatious litigant under CCP §391(b)(3) and (4); (3) Shieh has a reasonable probability to prevail; (4) the security of more than $40 million and $500,000.00 respectively is unreasonably excessive; and (5) the action should not be dismissed.

VI. CONCLUSION

Petitioners seek review on a writ of certiorari under the United States Supreme Court Rules, Rule 10.1 (c). The California state legislature 1990 version of CCP §391 et seq. is posing serious conflicts with both the U.S. constitution and the California constitution. Its application to this instant action is especially unfair and unconstitutional. This type of action constitutes State Action and is

discriminatory in nature, violated Petitioners' right to access to the court and rights of equal protection and due process; thus a writ should be issued to the California Supreme Court to protect petitioners' constitutional rights and undo the impact of the erroneous decisions.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Dated: September 13, 1993.

Respectfully submitted,

James L. Andion
301 North Lake Avenue
Suite 720A,
Pasadena, California 91101
(818) 405-0344
Counsel for Petitioners
L. Shieh, Say & Say
a California corporation

APPENDIX A

Second Appellate District,

Division One, No. B076677

S034096

IN THE SUPREME COURT OF

THE STATE OF CALIFORNIA

IN BANK

SAY & SAY ET AL., Petitioners

v.

LOS ANGELES COUNTY

SUPERIOR COURT, Respondent

W. CHRISTOPHER, et al., Real Parties

In Interest

Petition for review DENIED.

LUCAS

_____

Chief Justice

APPENDIX B

IN THE COURT OF APPEAL OF THE

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

L. SHIEH et al.,	)	B076677
Petitioners,	)	(L.A.S.C. Nos.
v.	)	BC054981,
THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,	)	BC059833) (EDWARD Y. KAKITA,
Respondent,	)	Judge)
A. CASTELLANO et al.,	)	ORDER
Real Parties in Interest.	)	

THE COURT*:

The petition for writ of mandate / prohibition and request for stay, filed

July 7, 1993, has been read and considered.

The petition is denied.

---

*SPENCER, P.J.

ORTEGA, J.

VOGEL (Miriam A.), J.

OFFICE OF THE CLERK

COURT OF APPEAL

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

JOSEPH A. LANE, CLERK

DIVISION: 1 DATE: 07/15/93

Law Offices of
James L. Andion
301 N. Lake Avenue
Suite 720D
Pasadena, CA. 91101

RE: Shieh, L.
vs.
s.c.l.a.
Castellano, A.
2 Civil B076677
Los Angeles NO. BC059833

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 11/17/92 DEPT. 14

HONORABLE EDWARD KAKITA JUDGE

M. LANGIE DEPUTY SHERIFF

J. BESINAIZ DEPUTY CLERK

ELECTRONIC RECORDING MONITOR

E. BANDA LARA REPORTER

==========

9:00 am BC054981

L.Shieh v. Warren Christopher, et al

RELATED TO BC041515

RECUSED: PAUL BOLAND

MARK KENNEY (X) FOR DEFT.

Plaintiff RICHARD HOPKINS (X)

Counsel LUCIEN SCHMIT (X)

D. JAY RITT (X) FOR DEFT

Defendant KENNETH KINGSHILL (X)

Counsel GARY HOLLINGSWORTH (X)

ANDREW CASTELLANO (X)

RICHARD TARLOW (X)

WILLIAM HIGHBERGER (X)

==========

NATURE OF PROCEEDINGS:

MOTION OF DEFENDANTS, O'MELVENY & MYERS AND GIBSON, DUNN & CRUTCHER PURSUANT TO C.C.P. SECTION 391.1 FOR ORDER REQUIRING SECURITY AND FOR A PRE-FILING ORDER PURSUANT TO C.C.P. SECTION 391.7; MOTION OF DEFENDANT, RICHARD G. TARLOW FOR ORDER REQUIRING PLAINTIFF TO POST SECURITY AS VEXATIOUS LITIGANT; JOINDER OF ABOVE DEFENDANT IN CO-DEFENDANT, O'MELVENY & MYERS' MOTION PURSUANT TO C.C.P. SECTION 391.1 FOR ORDER REQUIRING SECURITY; MOTION OF DEFENDANTS, O'MELVENY & MYERS AND GIBSON DUNN & CRUTCHER PURSUANT TO C.C.P. SECTION 1987 (C) TO PRODUCE DOCUMENTS;

Motions for orders requiring security and require a pre-filing order are

granted. Plaintiff, L. Shieh, is declared a vexatious litigant, pursuant to Section 391(b)(3) and (4). Plaintiff is to post a security of $100,000.00 per defendant and is ordered to obtain a pre-filing order prior to the filing of future litigation.

Remaining matters and future matters are stayed until bonds are posted.

Motions for orders requiring security are continued to December 17, 1992, at 9:00 a.m., in this department to determine if plaintiff has posted bonds on each defendant or alternatively to dismiss actions as to all defendants in related cases.

Counsel Highberger is to prepare order and give notice.

MINUTES ENTERED

11/17/92

COUNTY CLERK

PAGE 1 DEPT. 14

APPENDIX D

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATED: 06/03/93 DEPT. 14

HONORABLE EDWARD KAKITA JUDGE

J. BESINAIZ DEPUTY CLERK

V. GALLUCCI, CSL DEPUTY SHERIFF

J. BESINAIZ DEPUTY CLERK

ELECTRONIC RECORDING MONITOR

L. COMSTOCK REPORTER

==========

9:00 am BC054981

L.Shieh v. Warren Christopher, et al

RELATED TO BC041515

RECUSED: PAUL BOLAND

Plaintiff RICHARD HOPKINS (X)

Counsel WILLIAM HIGHBERGER (X)

Defendant RICHARD TARLOW (X)

Counsel JEFFREY WEBB (X)

LUCIEN SCHMIT (X)

==========

NATURE OF PROCEEDINGS:

MOTION FOR ORDERS REQUIRING SECURITY TO DETERMINE IF PLAINTIFF HAS POSTED BONDS, OR ALTERNATIVELY, TO DISMISS ACTION; MOTION OF DEFENDANTS, O'MELVENY & MYERS AND GIBSON, DUNN & CRUTCHER FOR SANCTIONS PURSUANT TO CCP SECTION 128.5, 177.5 AND 2023(B)(1); MOTION OF DEFENDANTS FOR ORDER TO STRIKE OPPOSITION OF PLAINTIFF AND ATTORNEYS TO PENDING SANCTIONS MOTION; REQUEST OF DEFENDANTS FOR SANCTIONS; REQUEST OF PLAINTIFFS FOR SANCTIONS;

Motion for order requiring security is held. The Court finds that no bonds have been posted and case is now ordered dismissed with prejudice.

Motion for sanctions and Motion to strike opposition are continued to June 28, 1993, at 9:00 a.m., in this department.

Court orders that no papers be filed prior to the above date except defendants new motion for sanctions and a declaration from Richard Hopkins.

An Order to Show Cause regarding sanctions against James Andion for violating court order regarding the filing of documents is set for June 28, 1993, at 9:00 a.m., in this department.

The Court finds that James Andion is not attorney of record until an Association of Counsel or a Substitution of Attorney is filed.

MINUTES ENTERED

06/03/93

COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATED: 06/03/93	DEPT. 14
HONORABLE EDWARD KAKITA	JUDGE
J. BESINAIZ	DEPUTY CLERK
V. GALLUCCI, CSL	DEPUTY SHERIFF
J. BESINAIZ	DEPUTY CLERK
ELECTRONIC RECORDING MONITOR	
L. COMSTOCK	REPORTER

==========

9:00 am BC054981

L.Shieh v. Warren Christopher, et al

RELATED TO BC041515

RECUSED: PAUL BOLAND

Plaintiff	RICHARD HOPKINS (X)
Counsel	WILLIAM HIGHBERGER (X)
Defendant	RICHARD TARLOW (X)
Counsel	JEFFREY WEBB (X)
	LUCIEN SCHMIT (X)

==========

NATURE OF PROCEEDINGS:

Counsel, Mr. Highberger, is to give notice.

MINUTES ENTERED
06/03/93
COUNTY CLERK

APPENDIX E

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATED: 07/27/93 DEPT. 14

HONORABLE EDWARD KAKITA JUDGE

J. BESINAIZ DEPUTY CLERK

V. GALLUCCI, CSL DEPUTY SHERIFF

F. MOREAU DEPUTY CLERK

ELECTRONIC RECORDING MONITOR

J. WYATT REPORTER

==========

9:00 am BC054981

L.Shieh v. Warren Christopher, et al

RELATED TO BC041515

RECUSED: PAUL BOLAND

Plaintiff	RICHARD HOPKINS
Counsel	JAMES ANDION (X)
Defendant	WILLIAM HIGHBERGER(X)
Counsel	DONALD MILLER (X)
	LUCIEN SCHMIT
	DAVID EISEN

==========

NATURE OF PROCEEDINGS:

ORDER TO SHOW CAUSE RE: CONTEMPT AGAINST CITEE JAMES ANDION FOR VIOLATION OF COURT ORDERS OF JUDGES EDWARD KAKITA DATED: NOVEMBER 17, 1992 AND MARCH 4, 1993, AND JUDICIAL COUNSEL DESIGNATED SUPERIOR COURT JUDGE THEODORE MILLARD DATED FEBRUARY 26, 1993.

Citee, James Andion, is previously advised in writing of his rights against self-incrimination, his right to remain silent, to be represented by counsel of his choice and to a full and complete hearing, by order of June 11, 1993. Citee is present in court this date and waives said rights and elects to testify, the waiver being made knowingly and intelligently.

Matter comes on for hearing and is argued.

The Court finds that the Citee, James Andion, had knowledge of the orders of November 17, 1992, March 4, 1993, and February 26, 1993, that the Citee had the ability to comply with said orders, that he failed to comply with the orders on May 20, 1993, and that his failure to comply was willful.

The Citee, James Andion, is adjusted quilty of 1 count of contempt and sentenced to 5 days in County Jail, saide sentence is suspended pending further order of the Court.

Remaining Counts of Contempt are placed off calendar.

Counsel, William Highberger is to give notice.

APPENDIX F

JAMES L. ANDION [093726]
LAW OFFICE OF JAMES L. ANDION
301 N. Lake Ave., Suite 720D
Pasadena, CA. 91101
(818) 405-0344

Attorney for Plaintiffs
and Appellants
Say & Say, L.
Shieh and Plaintiffs'
Attorneys

SUPERIOR COURT OF THE STATE OF
CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

L.SHIEH, SAY & SAY	) CASE NO. BC054981
Plaintiffs and	)
Appellants,	)
	)
vs.	)
	)

WARREN CHRISTOPHER,)
et al.,)
Defendants and)
Respondents)
)

PLAINTIFFS AND APPELLANTS Say & I am in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my address is: 301 North Lake Avenue, 7th Floor, Pasadena, CA. 91101. On June 7, 1993, I served the foregoing document described as Notice of Appeal Say, a California corporation and L. Shieh, an individual ("Plaintiffs") and plaintiffs' attorneys hereby appeal to the Court of Appeal of the State of California, Second Appellate District, from any and all rulings, decisions, judgments and orders (collectively "Orders") rendered, issued or made by

the above-entitled court, on and before the date of the filing of this Notice of Appeal, and any and all rulings, decisions, judgments and orders rendered, issued or made by the above entitled court subsequently in connection with, arising under or relating to the above order Orders.

Dated:June 7,1993

James L. Andion
Attorney for
Plaintiffs/Appellants
and Plaintiffs'
Attorneys

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY

OF LOS ANGELES

I am in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my address is: 301 North Lake Avenue, 7th Floor, Pasadena, CA. 91101. On June 7, 1993, I served the foregoing document described as Notice of Appeal on all interested parties in this action.

Richard Tarlow, Esq.
23632 Calabasas Rd., Suite 105
Calabasas, Ca. 91302
(In pro per)

William Highberger, Esq.
GIBSON, DUNN & CRUTCHER
333 S. Grand Ave.

Los Angeles, Ca. 90071
(for GDC defendants and
O'Melveny & Myers defendants)

(X) BY MAIL

( ) I deposited such envelope in the mail at Pasadena, California. The envelope was mailed with postage thereon fully prepaid.

(X) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in

affidavit. Executed on June 7, 1993, at Pasadena, California.

( )by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
(X) by placing ( ) the original (X) a true copy thereof enclosed in sealed envelopes addressed as follows:

( ) BY PERSONAL SERVICE I delivered such envelope by hand to the offices of the addressee.

Executed on June 7, 1993, at Pasadena, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

( ) (Federal) I declare that I am employed in the office of a member of

the bar of this court at whose direction the service was made.

T. Pan	T. Pan
Type or Print Name	Signature

[c:\1\chris\93s\proof.607] 4b

JAMES L. ANDION [093726]
LAW OFFICE OF JAMES L. ANDION
301 N. Lake Ave., Suite 720D
Pasadena, CA. 91101
(818) 405-0344

Attorney for Plaintiffs
and Appellants
Say & Say, L.
Shieh and Plaintiffs'
Attorneys

SUPERIOR COURT OF THE STATE OF
CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

L.SHIEH, SAY & SAY Plaintiffs and Appellants, vs.	) CASE NO. BC059833)))))

ANDREW CASTELLANO,)
et al.,)
Defendants and)
Respondents)
)

PLAINTIFFS AND APPELLANTS Say & I am in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my address is: 301 North Lake Avenue, 7th Floor, Pasadena, CA. 91101. On June 7, 1993, I served the foregoing document described as Notice of Appeal Say, a California corporation and L. Shieh, an individual ("Plaintiffs") and plaintiffs' attorneys hereby appeal to the Court of Appeal of the State of California, Second Appellate District, from any and all rulings, decisions, judgments and orders (collectively "Orders") rendered, issued or made by

the above-entitled court, on and before the date of the filing of this Notice of Appeal, and any and all rulings, decisions, judgments and orders rendered, issued or made by the above entitled court subsequently in connection with, arising under or relating to the above order Orders.

Dated:June 7,1993

James L. Andion
Attorney for
Plaintiffs/Appellants
and Plaintiffs'
Attorneys

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY

OF LOS ANGELES

I am in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my address is: 301 North Lake Avenue, 7th Floor, Pasadena, CA. 91101. On June 7, 1993, I served the foregoing document described as Notice of Appeal on all interested parties in this action.

Andrew Castellano
1004 Arroyo Drive, No.2
South Pasadena, CA. 91030
(Defendant In Pro Per)

Gary Hollingsworth
11022 Santa Monica Blvd. Ste. 300
Los Angeles, CA. 90025

(Defendant In Pro Per)

John A. Hendry
HENDRY, SERIAN, ALT & JOUANICOT
35 N. Lake Ave., Ste. 650
Pasadena, CA. 91101
(For Defendant Household Bank)

Ms. Lynn Feton
Court Operations
Orange County Superior Court
700 Civic Center Dr.
Santa Ana, CA. 92701
(Hand Delivery)

Gary Hollingsworth
11022 Santa Monica Blvd., Ste. 300
Los Angeles, CA. 90025
(Defendant In Pro Per)

Mark J. Kenney
SEVERSON & WERSON

One Embarcadero Center, 25th Fl.
San Francisco, CA. 94111
(For Defendant Francisca N. Araiza)

The Clerk, Dept. 14
Los Angeles Superior Court
111 N. Hill Street
Los Angeles, CA. 90012

(X) BY MAIL

( ) I deposited such envelope in the mail at Pasadena, California. The envelope was mailed with postage thereon fully prepaid.

(X) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of

business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. Executed on June 7, 1993, at Pasadena, California.

( )by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
(X) by placing ( ) the original (X) a true copy thereof enclosed in sealed envelopes addressed as follows:

( ) BY PERSONAL SERVICE I delivered such envelope by hand to the offices of the addressee.

Executed on June 7, 1993, at Pasadena, California.

(X) (State) I declare under penalty of perjury under the laws of the

State of California that the above is true and correct.

( ) (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

T. Pan T. Pan

Type or Print Name Signature

[c:\1\cast\93s\proof.607] 4b

APPENDIX G

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATED: 06/28/93	DEPT. 14
HONORABLE EDWARD KAKITA	JUDGE
J. BESINAIZ	DEPUTY CLERK
V. GALLUCCI, CSL	DEPUTY SHERIFF
J. BESINAIZ	DEPUTY CLERK
ELECTRONIC RECORDING MONITOR	
J. WYATT	REPORTER

==========

9:00 am BC054981

L.Shieh v. Warren Christopher, et al

RELATED TO BC041515

RECUSED: PAUL BOLAND

Plaintiff	RICHARD HOPKINS (X)
Counsel	JAMES ANDION (X)
Defendant	WILLIAM HIGHBERGER (X)
Counsel	DONALD MILLER (X)
	LUCIEN SCHMIT (X)
	DAVID EISEN (X)

==========

NATURE OF PROCEEDINGS:

ORDER TO SHOW CAUSE RE: CONTEMPT AS TO L. SHIEH; ORDER TO SHOW CAUSE REGARDING SANCTIONS AGAINST JAMES ANDION FOR VIOLATING COURT ORDERS; MOTION OF DEFENDANTS, O'MELVENY & MYERS AND GIBSON, DUNN & CRUTCHER FOR SANCTIONS PURSUANT TO CCP SECTIONS 128.5, 1775. AND 2023(B)(1); MOTION OF ABOVE DEFENDANTS FOR ORDER TO STRIKE OPPOSITION OF PLAINTIFF AND ATTORNEYS TO PENDING SANCTIONS MOTION;

As to the Order to show cause as to L. Shieh, the court finds that L. Shieh is not present and therefore issues an Attachment for Defaulter as to L. Shieh with no bail. Order to show cause is discharged as to Guy Rollins and James Andion.

As to the Order to show cause as to James Andion, the court continues the matter to July 17, 1993, at 9:00 a.m., in this department. Mr. Andion is personally served with order to show cause papers. No other notice will be given. Court orders that Mr. Andion have his client, L. Shieh, appear on the above date and time.

Motion for sanctions is granted in its entirety. Motion to strike is denied.

Counsel, Mr. Highberger, is to give notice.

PAGE 1 DEPT. 14

MINUTES ENTERED
06/28/93
COUNTY CLERK

APPENDIX H

GIBSON, DUNN & CRUTCHER
KENNETH W. ANDERSON
WILLIAM F. HIGHBERGER
JEFFREY F. WEBB
333 South Grand Avenue
Los Angeles, CA. 90071
(213) 229-7000

Attorneys for Defendants
O'Melveny & Myers and
Gibson, Dunn & Crutcher

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

L. SHIEH,	CASE NO.BC 054981
Plaintiff,	[Assigned To
v.	Judge Edward Y.
WARREN CHRISTOPHER,	Kakita, Dept.14]
MICHAEL NEWMAN;	
O'MELVENY & MYERS;	DEFENDANTS'

DOUGLAS W. ABENDROTH; WILLIAM G. ADAMS; WALLACE M. ALLAN; RUSSELL G. ALLEN; KERMIT W. ALMSTEDT; JEAN M. ARNWINE; CHARLES G. BAKALY, JR.; GEORGE M. BARTLETT; BARON BEEK; JOHN H. BEISNER; CHARLES W. BENDER; BEN E. BENJAMIN; KENDALL R. BISHOP; LEAH MARGARET BISHOP; ROBERT D. BLASHEK, III; DONALD T. BLISS, JR.; RICHARD A. BOEHMER; GREYSON LEEBRYAN; FRANCIS J. BURGWEGER, JR.; JOSEPH A. CALABRESE; JERRY W. CARLTON; DAVID W.

NOTICE OF MOTION AND MOTION FOR SANCTIONS PURSUANT TO C.C.P. 128.5, 177.5 AND 2023(b)(1); MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF WILLIAM F. HIGHBERGER IN SUPPORT THEREOF

Date: Feb.3,1993
Time: 9:00 a.m.
Dept.: 14
Law & Motion
Cutoff: None Set
Discovery

CARTWRIGHT; THERESA A. CEREZOLA; HOWARD CHAO; MARTIN S. CHECOV; R. BRADBURY CLARK; JAMES W. COLBERT, III; WILLIAM T. COLEMAN, JR.; WILLIAM N. COONEY; BERTRAND M. COOPER, JR.; STEPHEN A. COWAN; JAMES E. CROSS, ARTHUR B. CULVANHOUSE, JR.; BRIAN S. CURREY, et al.,

Defendants.

Cutoff: None Set
Trial Date: None Set

TO PLAINTIFF LIANG-HOUH SHIEH AND HIS CURRENT CO-COUNSEL OF RECORD DONALD P. MILLER AND RICHARD R. HOPKINS AND HIS FORMER COUNSEL OF RECORD LUCIEN A. SCHMIT III:

PLEASE TAKE NOTICE THAT defendants O'Melveny & Myers and Gibson, Dunn &

Crutcher will appear before the Honorable Edward Y. Kakita in Department 14 of the Los Angeles Superior Court, 111 North Hill Street, Los Angeles, California 90012 on February 3, 1993, at 9:00 a.m. or as soon thereafter as they may be heard to move pursuant to C.C.P. 128.5, 177.5, and 2023(b)(1) for an order awarding sanctions payable to these defendants in the amount of $56,405.17 jointly and severally against plaintiff Shieh and attorney Schmit, $26,560.08 jointly and severally against plaintiff Shieh, attorney Schmit and attorney Hopkins, and $11,820.74 jointly and severally against plaintiff Shieh, attorney Hopkins and attorney Miller. Further, defendants request that the court impose sanctions of at least $7,500 payable to the County of Los Angeles for five separate violations of the court's stay order to be paid

jointly and severally by plaintiff Shieh and attorneys Miller and Hopkins. This motion is based on the attached Memorandum of Points and Authorities and Declaration of William F. Highberger and all of the papers on file in this court.

Defendants have previously requested sanctions from this court in the amount of $2,750 plus $1,500 payable to the County of Los Angeles to be paid jointly and severally by plaintiff Shieh and attorneys Miller and Hopkins in connection with defendants' Notice of Motion and Motion to Quash Deposition Notice, etc.; said request for sanctions has not been granted or denied as of the date of the preparation of this motion, and this motion supersedes that request. Defendants have also requested sanctions in their Objection, Evidentiary Objection, etc. In Response To Plaintiff's Statement of

Disqualification, etc.; as the Statement of Disqualification and defendants' Request for Sanctions are pending before Judge Theodore Millard of the Orange County Superior Court, the time associated with that request for sanctions is excluded fro this request.

Defendants are not seeking sanctions by this motion for time spend opposing plaintiff Shieh's frivolous litigation activity in the Court of Appeal and Supreme Court in connection with this case.

Dated: January 19, 1993.

GIBSON, DUNN & CRUTCHER

KENNETH W. ANDERSON

WILLIAM F. HIGHBERGER

JEFFREY F. WEBB

By: William F. Highberger

Attorneys for Defendants

O'Melveny & Myers and

Gibson, Dunn & Crutcher

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Shieh and his counsel have been on written notice since August 5, 1992 (Exhibit A hereto) that this litigation was frivolous and that these defendants would seek sanctions pursuant to C.C. P. 128.5. Oblivious to this early warning, plaintiff/co-counsel Shieh, co-counsel Lucien Schmit and his more recently appearing co-counsel Richard Hopkins and successor co-counsel Donald Miller have collectively pressed on with grossly frivolous, intentionally harassing and dilatory litigation tactics. The court's own files aptly demonstrate the point so this brief will be short and succinct.

Because plaintiff himself has been in this case from the start as counsel of record and continues as plaintiff even after nominally withdrawing as counsel of record, he should be held accountable

for awardable sanctions for the entire duration of this case. Because his other co-counsel have come and gone at various times, defendants have allocated their costs to the various discrete periods reflecting the dates of the various arrivals and departures.[1] The dates are as follows:

---

[1]Because the core of the sanctionable activity is the maintenance of the suit itself, defendants believe that costs incurred should be jointly awarded without regard to which of the co-counsel of record at a given time signed this or that motion, opposition, peremptory cahllenge or the like. While counsel Schmit, Hopkins and Miller claim to act independently of each other in their representation of a common client, they all share the same address, telephone and fax numbers, and at no time did any one of them purport to criticize the activity of a fellow co-counsel. Recently, on December 29, 1992, new co-counsel Miller claimed in writing that all co-counsel must act in unison before Mr. Shieh can be bound. (Exhibit D hereto.) While this position had not been previously expressed, it shows the mutuality of interest and action of the various co-counsel. The

May 11, 1992, suit filed by Shieh alone.[2]

July 8, 1992, Schmit associates in as counsel with Shieh and signs First Amended Complaint a week later. Complaint first served on firms on July 16.

California court of appeal has upheld sanctions imposed on a law firm and its individual attorneys, jointly and severally with the client, in Young v. Rosenthal, 212 Cal. App. 3d 96, 128 (1989), *cert. denied*, 494 U.S. 1080 (1990). In Young, the court found that sanctions against the attorneys were "absolutely mandatory" where the attorneys "knowingly lied to the court, acquiesced in their client's demands, and actively supported frivolous motions." Id.

[2]It is important to remeber that Shieh had already filed the same action against these defendants in federal court, that Judge Pfaelzer had dismissed parts thereof with prejudice, that the balance of the case had thereafter been dismissed on plaintif's motion and that plaintiff thereafter purported to bring the claims dismissed with prejudice as well as the other claims in this refiled state action.

October 27, 1992, Shieh purports to substitute out as co-counsel, leaving only Schmit as attorney of record.

November 3, 1992, Hopkins signs first paper in this docket number, appears for plaintiff the next day on unsuccessful ex parte and files formal Association of Counsel on November 11, 1992.

December 28, 1992, Miller substitutes in as counsel in lieu of Schmit; Hopkins continues as co-counsel of record.

Accordingly, sanctions for the following periods in the following amounts are sought:[3]

July 15, 1992, to November 2, 1992, against Shieh and Schmit: $56,405.17 for

[3]This does not include time of any O'Melveny lawyers or time of individual Gibson, Dunn & Crutcher lawyers not specifically assigned to this case and involved only in responding to purported service of process on themselves, nor does it include time spent on the pending appeals in the "Newman" and "Thompson" actions.

136.55 partner hours, 82.00 associate hours, 37.05 other hours and for disbursements.

November 3, 1992, to December 27, 1992, against Shieh, Schmit and Hopkins: $26,560.08 for 61.95 partner hours, 43.25 associate hours and for disbursements.

December 28, 1992 to January 18, 1993, against Shieh, Hopkins and Miller: $11,820.74 for 46.15 partner hours and for disbursements.

I.

SANCTION PURSUANT TO C.C.P. 128.5 AND 2023(B)(1) SHOULD BE AWARDED

Sanctions are awardable under each of the three separate and independent tests under C.C.P. 128.5(a), which provides that sanctions may be awarded for "bad faith actions or tactics" that are:

(1) "totally and completely without merit"

("frivolous" definition 128.5(b)(2)(A), sometimes termed the "objective" test)

(2) "for the sole purpose of harassing an opposing party" ("frivolous" definition 128.5(b)(2)(B), sometimes termed the "subjective" test), or

(3) "solely intended to cause unnecessary delay").

C.C.P. 128.5 includes within its definition of "actions or tactics" the "filing and service of a complaint," which, therefore, justifies awarding sanctions for all the costs and attorneys fees in Superior Court resulting from that filing.[4]

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[4]See Lesser v. Huntington Harbor Corp., 173 Cal. App. 3d 922, 930 (1985) (holding that C.C.P. 128.5 "specifically states frivolous actions are not limited to making or opposing motions without good faith ... the section also applies

Sanctions are also appropriately awarded under C.C.P. 2023(b)(1) for the recent abusive attempts to conduct discovery in the face of a clear stay of proceedings and a written stipulation to the same effect (Exhibit B hereto) and after the motion to which it is supposedly directed has already been decided. See, generally, Defendants' Motion To Quash Notice of Deposition noticed for hearing concurrently herewith.

The factual showing why this motion should be granted is contained in these defendants' C.C.P. 391.1 motion and

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to *entire actions*not based on good faith which are frivolous or cause unnecessary delay in the resolution of a dispute"); and On v. Cow Hollow Properties, 222 Cal. App. 3d 1568, 1577 (1990) (holding that, in light of the legislative purpose of the statute, an award of fees under C.C.P. 128.5 "requires no more than a causal relationship between the offending legal action and the expenses incurred by the opposing party").

reply papers and the pending motion to quash, the motion and reply papers of co-defendant Tarlow, the motion and reply papers of defendants in the related Say & Say v. Castellano case, and, more generally, throughout the court's file.

The following are noteworthy examples of meritless, harassing or dilatory tactics by Shieh et al.:

1. July 1992: First Amended Complaint charging conspiracy by attorneys with client filed in clear violation of pre-filing requirements of Civil Code 1714.19; complaint includes numberous other frivolous claims, such as Lanham Act claim dismissed with prejudice by Judge Pfaezler in prior federal court action.
2. August 1992: Plaintiff attempts to serve over 300 individual

defendants by sending single boxes with dozens or scores of copies of complaint to single address.

3. September 23, 1992: Motion for reconsideration of ruling on notice of related cases filed, later denied.

4. November 4, 1992: Ex parte application to shorten time for yet another motion for reconsideration of ruling on notice of related case filed and summarily rejected.

5. November 12, 1992: Untimely 170.6 peremptory challenge filed. Subsequent writ petition summarily denied.

6. November 17, 1992: Plaintiff fails to personally appear in response to timely Notice To Appear.

7. November 17, 1992: Plaintiff serves 55-pages "Supplemental

Declaration" in opposition to vexatious litigant motion in court on morning of hearing.

8. November 27, 1992: Plaintiff files 170.1 motion.

9. November 30, 1992: Plaintiff files motion for reconsideration of vexatious litigant ruling unsupported by any sufficient showing.

10. Early December 1992: Plaintiff again purports to serve hundreds of individual defendants.

11. December 16, 1992: Plaintiff's second 170.1 disqualification motion served on defendants, President-elect Clinton, U.S. Senator Joseph Biden, U.S. Attorney General, Governor Pete Wilson, ABC, NBC, L.A. Times, New York Times and Washington Post.

12. December 29, 1992: Attorney Miller attempts to renege on commitment made in open court by attorney Schmit not to attempt to take defaults of individual defendants pending posting of bond (Exhibit C and D hereto).

13. January 4, 1993: Plaintiff purports to continue own motion for reconsideration two and a half months to April 16 without stipulation or approval of court.

14. January 5, 1993: Plaintiff serves three separate sets of form interrogatories (purporting to require separate responses from each of 240 separate individual defendants) in violation of stay orders and written stipulation by attorney Schmit previously (Exhibit B hereto).

15. January 7, 1993: Yet another purported 170.1 motion filed, buried in document titled "Notice of Related Case, Request For Replacement of JUDGE KAKITA And Disqualification"; Notice served on President-elect Clinton.

16. January 11, 1993: Plaintiff hand serves notice of deposition and demand for production seeking depositions on minimum 10-day notice in violation of same stay and stipulation and in violation of prior stipulation of counsel to commence[5] plaintiff's deposition before any defendant-related depositions are taken.

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[5]While the parties disagree whether the stipulation was that the deposition of plaintiff Shieh would be completed, there is no dispute as to agreement that it would, at least, be commenced for a day prior to any other depositions occurring.

In considering this sanction request, the court should seriously consider the ineffectiveness of prior, lesser sanction awards, all of which have gone unpaid and unheeded. As previously described in detail in defendants' Status Report Re Order To Show Cause, etc., filed December 16, 1992, and in the declarations attached thereto, plaintiff Shieh has consistently failed to pay sanctions imposed by this and other courts, and he claims to have a "policy" not to do so. Indeed, he apparently considers it a point of pride to be beyond the effective reach of monetary sanctions. See attached Declaration of D. Jay Ritt (Exhibit E hereto).

In particular, plaintiff Shieh has failed to pay (1) $1,500 in sanctions awarded to Fulbright & Jaworski by Judge Kakita on May 14, 1992: (2) $1,500 in

sanctions payable to Andrew Castellano awarded by United States District Judge John Davies on April 14, 1992; (3) additional sanctions of $2,490.50 payable to Francisca Araiza and (4) $1,500 payable to Gary Hollingsworth awarded by Judge Davies on April 14, 1992; and (5) $7,500 in sanctions payable to Ms. Araiza and (6) $2,500 in sanctions payable to the Clerk of the united States District Court awarded by Judge Davies on September 1, 1992. It is obvious that smaller monetary sanctions have not gotten his attention. Further, since plaintiff Shieh so blatantly refused to accept the court's authority to award sanctions, it is vitally important that sanctions be awarded jointly and severally against plaintiff Shieh and his several co-counsel of record in the three sums requested above.

II.

SANCTIONS PURSUANT TO C.C.P. 177.5 SHOULD BE AWARDED

C.C.P. 177.5 authorizes the court to award sanctions payable to the county (here the County of Los Angeles) "for any violation of a lawful court order by a person, done without good cause or substantial justification.... For the purposes of this section, the term 'person' includes a witness, a party, a party's attorney, or both." Violation need not be willful to be sanctioned. All that need be shown is that there was no valid excuse for the violation. Seysora v. Superior Court, 232 Cal. App. 3d 1075 (1991).

Here, the propounding of three sets of Form Interrogatories on January 5, 1993 (seeking answers separately from each of 340 separate individual defendants), the propounding of a Notice of Deposition on

January 11, 1993, and another Notice of Deposition on January 15, 1993, constitute clear violations of the court's November 17, 1992, Minute Order and its Formal Order of December 11, 1992, both staying all proceedings in this case. Accordingly, for these five separate violations (345 separate violations if the number of separate interrogatory responses demanded is counted) sanctions jointly and severally payable by plaintiff Shieh and attorneys Miller and Hopkins in at least the amount of $7500 should be awarded.

CONCLUSION

The record before this court at this time well demonstrates that this vexatious litigant is pursuing this suit in bad faith with meritless claims and motions and solely for the purposes of

harassment and delay. The mere imposition of vexatious litigant relief was not enough to stop this litigation monster. Meaningful sanctions pursuant to C.C.P. 128.5, 177.5 and 2023(b)(1) are absolutely necessary if there is to be any end to this nightmare.

Dated: January 19, 1993.

GIBSON, DUNN & CRUTCHER
KENNETH W. ANDERSON
WILLIAM F. HIGHBERGER
JEFFREY F. WEBB

By: _____
William F. Highberger

Attorneys for Defendants
O'Melveny & Myers and
Gibson, Dunn & Crutcher

DECLARATION OF WILLIAM F. HIGHBERGER

I, WILLIAM F. HIGHBERGER, do hereby declare:

1. I am a partner at Gibson, Dunn & Crutcher, attorneys for defendants O'Melveny & Myers and Gibson, Dunn & Crutcher in this action, and am the attorney primarily responsible for the defense of these entities.

2. I have reviewed the accounting records showing the hours charged to this matter by myself and other attorneys and legal assistants at Gibson, Dunn & Crutcher as well as the disbursements charged to this matter. Billings to this matter are separate and apart from time and disbursements charged to the appeals in the "Newman" and "Thompson" matters. Further, because we are not seeking an award of sanctions from the Superior Court for

time spent in opposition to the writs of mandate and petition for review filed to date by plaintiff in the instant, "Christopher" action, the hours set forth below exclude time allocable to those appellate activities to the best of my ability. Further, I have excluded in the calculations below the five hours spent reviewing plaintiff's second Statement of Disqualification of Judge and preparing our Objections, Etc., And Request For Sanctions, which are pending before Judge Theodore Millard of the Orange County Superior Court. Subject to the foregoing, the following are the amounts of time spent in the defense of this matter for the periods indicated. Hours shown are grouped by "partner hours" and "associate hours." There has also been time billed to this matter in relatively small amounts by summer

associates and legal assistants, showns as "other hours."

July 15, 1992 to November 2, 1992:	136.55 partner hours 82.00 associate hours 37.05 other hours $49,969.50 total for attorney's fees $6,435.67 disbursements Total sanction: $56,405.17
November 3, 1992 to December 27, 1992:	61.95 partner hours associate hours $23,057.00 total for attorney's fees $3,503.83 disbursements

Total sanction:
$26,560.08

December 28, 1992 to January 18, 1993: 46.15 partner hours
$11,537.50 total for attorney's fees
$234.24 disbursements
Total sanction:
$11,820.74

The above calculations are based on requested reimbursement rates of $250 per partner hour, $237 per associate hour, and $40 per other hour, which is less than our actual charges in this and other matters. Because of the inevitable lag in reporting time, there may be additional hours which have been incurred, particularly since December 31, 1992, which are not shown above as well as disbursements which have not yet

been posted to this matter. Defendants reserve the right to file a supplemental declaration and to modify the amount of sanctions requested in accordance therewith.

3. Attached hereto as Exhibit A is a letter I sent to Mr. Schmit on August 5, 1992, pointing out the frivolous nature of this action.

4. Attached hereto as Exhibit B is a written stipulation made by attorney Schmit and myself on September 2, 1992, staying all discovery until the vexatious litigant stay was lifted.

5. Attached hereto as Exhibit C is my letter of December 22, 1992, to Mr. Schmit confirming the commitment he made in open court on December 17, 1992, to take no steps to attempt to take defaults against individual defendants. Attached hereto as Exhibit D is attorney Miller's letter of December 29, 1992,

denying the existence of such agreement and denying Mr. Schmit's authority to make such a commitment.

6. Attached hereto as Exhibit E is a Declaration of attorney Jay Ritt in the related Fulbright & Jaworski case describing attorney Hopkins' comments about the probable difficulty of collecting any sanctions from Mr. Shieh.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Los Angeles, California on January 19, 1993.

_____

William F. Highberger

APPENDIX I

TITLE 3A
VEXATIOUS LITIGANTS

Definitions. 91.
Motion to require security. 91.1.
Hearing. 91.2.
Order to furnish security - Adjustment of amount. 91.3.
Dismissal if security not furnished. 91.4.
Motion stays litigations. 91.6.
Motion to prohibit filing of new litigation. 91.7.

91. Definitions.

As used in this title, the following terms have the following meanings:

(a) "Litigation" means any civil action or proceeding commenced, maintained or pending in any state or federal court of record.

(b) "Vexatious litigant" means a person who does any of the following:

(1) In the immediately preceding seven-year period has commenced, prosecuted or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.

(2) After a litigation has been finally determined against the person, repeatedly relitigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action,

claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

(3) In any litigation while acting in propria person, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

(4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

(c) "Security" means an undertaking to assure payment, to the party for whose benefit the undertaking is required to be furnished, of the party's reasonable

expenses, including attorney's fees and not limited to taxable costs, incurred in or in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a vexatious litigant.

(d) "Plaintiff" means a person (including corporation, association, partnership and firm or governmental entity) against whom a litigation is brought or maintained or sought to be brought or maintained.

S 391.1. Motion for order requiring security; grounds

In any litigation pending in any court of this state, at any time until final judgment is entered, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security. The motion must be based upon the ground, and supported by

a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that he will prevail in the litigation against the moving defendant.

S. 391.2 Scope of hearing; ruling not deemed determination of issues

At the hearing upon such motion the court shall consider such evidence, written or oral, by witnesses or affidavit, as may be material to the ground of the motion. No determination made by the court in determining or ruling upon the motion shall be or be deemed to be a determination of any issue in the litigation or of the merits thereof.

S 391.3. Order to furnish security; amount

If, after hearing the evidence upon the motion, the court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant, the court shall order the plaintiff to furnish, for the benefit of the moving defendant, security in such amount and within such time as the court shall fix.

S 391.4. Dismissal for failure to furnish security

When security that has been ordered furnished is not furnished as ordered, the litigation shall be dismissed as to the defendant for whose benefit it was ordered furnished.

S 391.5. Repealed by states.1982, c. 517, p. 2336, S 100

S 391.6. Stay of proceedings

When a motion pursuant to Section 391.1 is filed prior to trial the litigation is stayed, and the moving defendant need not plead, until 10 days after the required security has been furnished and the moving defendant given written notice thereof. When a motion pursuant to Section 391.1 is made at ant time thereafter, the litigation shall be stayed for such period after the denial of the motion or the furnishing of the required security as the court shall determine.

S 391.7. Prefiling order prohibiting the filing of new litigation; contempt; conditions

(a) In addition to any other relief provided in this title, the court may, on its own motion or the motion of any party, enter a prefiling order which

prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Disobedience of such an order by a vexatious litigant may be punished as a contempt of court.

(b) The presiding judge shall permit the filing of such litigation only if it appears that the litigation has merit and has not been filed for the purpose of harassment or delay. The presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as provided in Section 391.3.

(c) The clerk shall not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding

judge permitting the filing. If the clerk mistakenly files the litigation without such an order, any party may file with the clerk and serve on the plaintiff and other parties a notice stating that the plaintiff is a vexatious litigant subject to a prefiling order as set forth in subdivision (a). The filing of such a notice shall automatically dismissed unless the plaintiff within 10 days of the filing of such notice obtains an order from the presiding judge permitting the filing of the litigation as set forth in subdivision (b). If the presiding judge issues an order permitting the filing, the stay of the litigation shall remain in effect, and the defendants need not plead, until 10 days after the defendants are served with a copy of any such order.

(d) The clerk of the court shall provide the Judicial Counsel a copy of any prefiling orders issued pursuant to subdivision (a). The Judicial Counsel shall maintain a record of vexatious litigants subject to such prefiling orders and shall annually disseminate a list of such persons to the clerks of the courts of this state.

APPENDIX J

INTRODUCTION

On July 7, 1993, this Court issued a written order to Liang-Houh Shieh (Shieh) to show cause before this court on July 28 why we should not declare him to be a vexatious litigant as defined by Code of Civil Procedure section 391, subdivision (b)(4), and issue a prefiling order pursuant to Code of Civil Procedure section 391.7, subdivision (a), prohibiting him from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. (In re Whitaker (1992) 6 Cal.App.4th 54, 55, review den. Jul. 22, 1992; In re Luckett (1991) 232 CAl.App.3d 107,108, review den. Sep. 25, 1991.) At the request of

Shieh's counsel, the matter was advanced to July 27.

BACKGROUND

Over the past two years, Shieh has filed innumerable complaints in the federal and state courts, many of which are duplicative and most of which are based on substantially similar facts. These various suits have resulted in at least 19 writ petitions to this court and 1 to the Fourth District, some of which are duplicative and all of which have been denied. He and his counsel have been sanctioned separately three times for pursuing frivolous writ petitions.

In addition to the two duplicative appeals which promoted this proceeding (Fulbright & Jaworski v. Shieh (B068256, June 19, 1992; B075640, Apr. 26, 1993), which we recently dismissed largely for

lack of jurisdiction and partly due to Shieh's failure to pay the sanctions imposed by the trial court or to post a bond to stay the order, Shieh has filed at least 14 appeals in 9 separate matters. In Shieh v. Christopher (BO 75017, May 1, 1993), the appeal was dismissed on June 17, 1993 for lack of jurisdiction. In Hsieh v. Thompson (B064714, Feb. 1, 1993), review denied on May 19, 1993, and Shieh v. Newman (B059327, Sept. 16, 1992), review denied December 30, 1992, the orders of dismissal were affirmed. In Say & Say v. Castellano (B075267, Apr. 28, 1993), the appeal was dismissed for lack of jurisdiction on June 24, 1993. In Shieh v. Christopher (B076400, May 28 and June 3, 1993), a motion to dismiss for lack of jurisdiction was filed on June 25 and Shieh was given until August 3, 1993 to respond. Of the remaining appeals, two

are scheduled for oral argument on July 29, 1993, three are not yet or just have been fully briefed and four are not yet docketed. In short, Shieh has yet to prevail in this court or in the lower courts.

In the matter which prompted this proceeding, Fulbright & Jaworski's complaint alleges in pertinent part that shortly after Shieh joined the firm as a partner, the firm became aware that Shieh had filed and still had pending "a facially offensive and inappropriate complaint in Los Angeles County Superior Court against a long-standing and well-regarded law firm, Graham & James. Shieh had concealed this fact from Fulbright by, among other things, suing Graham & James under a pseudonym. This fact, together with other inappropriate conduct of Shieh [delineated elsewhere in the complaint], caused Fulbright to

reconsider Shieh's partnership in the firm."

Accordingly, on March 1, 1991, Fulbright & Jaworski partners Harry Hathaway (Hathaway) and David Ebershoff (Ebershoff) discussed with Shieh conditions which the firm desired to attach to his partnership. Hathaway and Ebershoff asked Shieh to agree to these conditions and sign a memorandum of understanding to that effect. Although Shieh had agreed to the conditions, and further agreed that the terms of the memorandum accurately reflected the parties' agreement, he refused to sign the memorandum of understanding. Instead, he asked that his agreement be set forth in a confirming letter. A confirming letter dated March 19, 1991 from Hathaway to Shieh set forth the parties' agreement to be bound by the terms of the memorandum of

understanding. Despite his agreement to do so, Shieh never dismissed the lawsuit against Graham & James. He also continued much of his other inappropriate conduct.

"On March 29, 1991, Shieh met with Hathaway and Ebershoff to discuss his future at Fulbright. At that meeting, Hathaway and Ebershoff told Shieh that, because of the conduct described above, the firm had decided to terminate his partnership. Shieh denied he was bound by the terms of the Memorandum of Understanding and he demanded a full partnership vote on the issue of his termination. A partnership vote was later taken and Shieh was expelled from [the firm], effective March 31, 1991."

After Shieh's partnership was terminated, he attempted on several occasions to have firm employees with whom he had worked closely remove firm

files and bring them to his home. He contacted all or most of the clients with whom he had been in communication during his brief partnership with the firm and "instructed them to sign a letter purporting, among other things, to give Shieh's attorney the right to all their files and their trust account funds and he instructed them not to communicate at any time with anyone acting on behalf of Fulbright." Additionally, Shieh instructed these clients to not pay invoices Fulbright & Jaworski sent to them without Shieh's prior consent. In some cases, he "purported to 'release' them from any obligation to Fulbright.... Shieh told some of these clients that Fulbright was unethical and unprofessional and had misrepresented to Shieh the firm's financial condition and the terms of its partnership opportunities."

A controversy arose over which client files should be transmitted to Shieh. On approximately May 17, 1991, Shieh's then-attorney, Francisca Araiza, delivered to Fulbright & Jaworski "approximately 20 copies of purported file transfer letters. These form letters were not directed from the clients to Fulbright, but purported instead to be from clients to Shieh's attorney, Araiza, among others. The form letters were not on the letterhead of clients. Replete with other defects, and absent independent confirmation of client desires, the letters were an insufficient basis on which to transfer files."

Both Shieh and his attorney "refused to accept Fulbright's assistance in preparing an appropriate file transfer letter, and claimed to 'prohibit' Fulbright from contacting any of the

clients. As a result, Fulbright sent letters to each of the clients on whose behalf the form transfer letters were received attempting to confirm they wanted their files transferred. Almost without exception, clients did not respond these efforts to confirm their wishes. Unbeknownst to anyone at Fulbright, . . . Shieh had contacted [these clients] and instructed them not to communicate with Fulbright at any time or respond to Fulbright letters."

Having instructed clients not to respond, Shieh "used Fulbright's inability to obtain direct client authorization for the transfer of their files to institute a campaign of harassing and baseless litigation in cases against Fulbright, some of its partners and Fulbright's lawyers. Shieh filed one action, entitled Shieh v. Ebershoff, et al, Case No. BC270441, in

Los Angeles County Superior Court," in which he unsuccessfully sought an injunction prohibiting Fulbright & Jaworski from communicating with clients. "This case was brought by Shieh maliciously and without probable cause and for the purpose of harassing Fulbright. After a series of demurrers to the various versions of his complaints were sustained, Shieh dismissed the case while another demurrer was pending."

Among other cases Shieh filed in the Superior Court of Los Angeles is PSJ, et al. v. Hathaway, et al., No. BC033849, in which Shieh and another "counseled the commencement of litigation by other clients, . . . PSJ Corporation and Perry Chien, regarding the delivery of its files to Shieh. PSJ was represented in this litigation by Shieh and Hollingsworth." They did so

notwithstanding all parties' knowledge that Fulbright & Jaworski had expressed a desire to deliver the files, requiring only a letter from PSJ and Chien asking that their files be transferred, and, therefore, Fulbright & Jaworski was not withholding the files wrongfully. Shieh "directed the filing and prosecution of this litigation in bad faith and without probable cause, and even though Shieh had instructed PSJ and Chien to ignore Fulbright's inquires about the clients' desires." The action "was filed, served and prosecuted [solely] for the purpose of harassing Fulbright and obtaining improper leverage in the Shieh Action." On the eve of the depositions of PSJ and Chien, at which they "would be asked to explain their refusal to provide Fulbright with clear instructions," PSJ and Chien dismissed the action.

"In an effort to interfere with Fulbright's relationship with and harass clients," Shieh served subpoenas on clients "with whom Shieh had had no previous contact at any time, . . . seeking ten years worth of billing and financial records . . . In an effort to embarrass Fulbright, Shieh repeatedly filed . . . confidential financial documents irrelevant to the litigation which he knew Fulbright desired to keep private."

After dismissing the first Ebershoff action, Shieh filed Shieh v. Ebershoff[6]

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6. Shieh had filed a federal action entitled Shieh v. Ebershoff (U.S.Dist.Ct., Cent. Dist. California, 1991, N. CV91-5446WJR). Apparently, the action was dismissed some time prior to January 12, 1993, the date on which the court ordered the inclusion of attorneys' fees of $125,421.49 in favor of the Graham & James defendants and $37,236.67 in favor of the Fulbright & Jaworski defendants included in the costs.

(Super. Ct. Los Angeles County, 1992, No. BC061170), acting in propria persona as co-counsel, a 180-page complaint purporting to state causes of action for RICO violations, breach of contract, breach of the covenant of good faith and fair dealing, seeking an accounting, defamation, fraud, seeking injunctive relief, discrimination in violation of 42 United States Code section 1981, conspiracy to discriminate, discrimination in violation of Civil Code section 52.1, intentional interference with economic relations, conversion, intentional infliction of emotional distress, declaratory relief, quantum merit, nonpayment of wages, seeking penalties pursuant to Labor Code section 203, wrongful termination in violation of public policy, including a breach of professional duty, unfair competition and violation of the Uniform

Trade Secret Act. Shieh alleged he then was a partner in Fulbright & Jaworski who specialized in Chinese law and related intentional law. He alleged the defendants (several law firms and all the partners therein, as well as some individual practitioners) had engaged in a conspiracy to take Shieh's clients away from him and drive him out of business. The smaller conspiracies encompassed within these grander conspiracies included one in which Fulbright & Jaworski and its partners were the primary actors.

From April 1989 to January 6, 1991, Shieh had been a partner in Lewis, D'Amato, Brisbois & Bisgaard. From September through December 1990, Shieh had several meetings with a number of the partners of Fulbright & Jaworski to discuss the possibility of Shieh becoming a partner in that firm. Shieh

described problems he had encountered with other attorneys interfering with his client relationship while he was employed by Graham & James. These attorneys had attempted to take his clients as their own. Additionally, Shieh pointed out that his Chinese clients had ways of thinking and methods of doing business which differed from those of American clients. He requested that he be informed and give his consent before anyone at Fulbright & Jaworski contacted his clients. Hathaway agreed; he assured Shieh that no one at Fulbright & Jaworski was interested in taking away Shieh's clients. Hathaway and Ebershoff promised "they would assign litigation and transactional attorneys to work under Shieh's direction as a separate Chinese practice group."

On approximately December 20, 1990, Hathaway and Shieh agreed Shieh would receive at least $200,000 in annual compensation under the guaranteed partner payment program of Fulbright & Jaworski. Shieh was to be assigned 365 partnership units, which Hathaway represented were the equivalent of approximately $200,000 per year; this was confirmed in writing. Accordingly, Shieh accepted the offer to become a partner in Fulbright & Jaworski. In part, the contract under which Shieh became a partner required that no member or agent of the firm interfere with Shieh's relationship with his clients a even if he ceased to be a partner. It further required that the firm release to Shieh all documents, discs, tapes and files pertaining to Shieh's clients. Additionally, Fulbright & Jaworski was obligated to act in good faith in using

discretion to determine what would justify expelling a partner.

Shieh performed all acts required of him in the performance of his contract of partnership, beginning work under the contract on January 7, 1991. However, on January 8, 1991, Hathaway and Ebershoff showed Shieh a copy of a suit which Shieh had filed against Graham & James but had not yet served. They threatened Shieh that he could not continue as a Fullbright & Jaworski partner unless he immediately dismissed the action with prejudice. The complaint against Graham & James alleged discrimination and retaliation against Shieh because of his race, national origin, religious beliefs, ancestry and age. Hathaway told Shieh the suit must be dropped because Hathaway was seeking office in certain bar associations and Fulbright & Jaworski's Los Angeles office might

merge with another law firm in the future. Consequently, Hathaway did not wish to anger influential law firms. It is Shieh's belief that the firm did not require any other partner to dismiss a personal lawsuit in order to avoid termination as a partner.

On approximately January 9, 1991, Hathaway and Ebershoff imposed as a condition of the continuation of Shieh's partnership in the firm the immediate dismissal with prejudice of the Graham & James suit. Additionally, once the suit was dismissed, Shieh's partnership status would be reviewed after an unspecified period; if Shieh did not meet unspecified requirements, he would be expelled from the partnership. On January 11, 1991, Hathaway and Ebershoff informed Shieh his partnership position would be reviewed on July 31, 1991. It was certain Shieh would continue as a

partner, but only if he immediately dismissed the Graham & James suit. The imposition of such a condition was outside the scope of the contract of partnership. Although Hathaway and Ebershoff confirmed that Shieh could take his clients with him if he left, they and Miller stated they would not permit certain of his clients to follow him from Lewis, D'Amato, Brisbois & Bisgaard to Fulbright & Jaworski unless those clients first paid many thousand of dollars in disputed billings. "This angered these clients and disrupted Shieh's relationship with them."

On approximately February 11, 1991, Ebershoff presented Shieh with the memorandum of understanding, stating Shieh must sign it if he was to remain a partner. Shieh had never before heard of or seen the memorandum, which was dated January 7. The memorandum did not

reflect any agreement between Shieh and Fulbright & Jaworski; he did not sign it. It is his belief that the firm has never required any other partner to sign a similar agreement. As of approximately February 7, 1991, the firm began paying Shieh only 60 percent of his agreed-upon compensation. It is his belief no other partner was removed from the guaranteed partner compensation program without the partner's prior consent.

On March 29, 1991, Hathaway delivered to Shieh a letter purporting to terminate Shieh's status as a partner, effective March 31. He did so without first obtaining a full partnership vote as required by Shieh's contract of partnership. It is Shieh's belief that the firm has never attempted to terminate any other partner's interest in this fashion, and the action was undertaken due to Shieh's refusal to

dismiss the Graham & James action or to sign the memorandum of understanding and Hathaway's reluctance to have the firm involved in Shieh's Chinese law practice. At the same time, Shieh delivered a memorandum to Hathaway and Ebershoff in which he stated he had not agreed to the provisions of the memorandum of understanding.

In May 1991, Shieh obtained authorization from most of his clients by which he could require Fulbright & Jaworski to surrender these clients' files. An agent of Shieh presented these authorizations to an agent of Fulbright & Jaworski on May 15 and requested the files. After some discussion, Shieh's agent was told to return later that day to pick up the files. When the agent returned, she was told the firm refused to release the files. She was again refused the files on the following day.

With the exception of few files, the firm has not yet honored the client authorizations.

Since March 29, 1991, Shieh has not authorized any member or agent of the firm to communicate with any of his clients. Instead, he specifically prohibited such communication. Nonetheless, the firm has contacted Shieh's clients repeatedly. In May, June, August and September of 1991, Fulbright & Jaworski sent letters to many of Shieh's client concerning the transfer of their files to Shieh. A letter of August 12 is misleading; it states Francisca Araiza has refused to accept the client files, but does not mention that she did so because she no longer was acting as Shieh's attorney. The letters fail to inform the clients that the firm had refused to release the files to another agent of Shieh.

Additionally, the firm sent disputed bills to some of Shieh's clients, misrepresenting that the bills were sent by Shieh as the "requesting attorney."

On February 18, 1993, the superior court declared Shieh to be a vexatious litigant pursuant to Code of Civil Procedure section 391, subdivisions (b)(2), (3) and (4), and ordered that security be posted in the sum of $150,000. The court stayed the action, "except for reconsideration of this order," until 10 days after the security was posted.[2]

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[2]Notice of appeal were filed in the Ebershoff case on April 2, 1993 (BO74985) and June 3, June 30, July 1 and July 2, 1993 (BO76762). The appeal in BO74985 has no effect on the vexatious litigant order, for Shieh appeals only from the court's order sustaining the demurrer of Lewis, D'Amato, Brisbois & Bisgaard without leave to amend and imposing sanctions on January 29, 1993 and the March 26, 1993 denial of his motion for reconsideration of the sanctions order. In BO76762,

It is clear this massive complaint in Shieh v. Ebershoff is simply Shieh's version of the same events recounted in Fulbright & Jaworski's complaint in the instant matter. The allegations made against the remaining defendants are substantially similar in character and content. On March 30, 1993, Shieh filed what is, minus the allegations of RICO violations and civil rights violations, essentially an identical complaint in Say & Say[3] v. Miller (Sup. Ct. Orange County, 1993, No. 707971, dismissed July 7, 1993). Shieh has filed similar complaints based on substantially similar facts in Shieh v. Christopher

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Shieh purported to appeal from "any and all rulings, decisions, judgments [sic] and orders . . . rendered, issued or made . . . subsequently in connection with, arising under or relating to the above Orders." He has been ordered to demonstrate that the appeal has merit or face its dismissal.

[3]Say & Say is a corporation owned and controlled solely by Shieh.

(Super. Ct. Los Angeles County, 1992, No. BC054981); Say & Say v. Castellano (Super. Ct. Los Angeles County, 1992, No. BC054981); Say & Say v. David (Super. Ct. Orange County, 1993, No. 706439); Say & Say v. Lindquist (Super. Ct. Orange County, 1993, No. 706438) and Say & Say v. Layman (U.S. Dist. Ct., Cent. Dist. California, 1991, No. CV916690JGD). In the Christopher, Castellano and Layman cases, as in the Ebershoff case, Shieh acted in propria persona as co-counsel.

In Shieh v. Christopher, Supra, Shieh purported to state causes of action for unfair competition, violation of Labor Code section 1050 et seq., defamation, invasion of privacy, interference with prospective economic advantage, legal malpractice, breach of fiduciary duty, conversion, breach of contract and inducing breach of contract. In the

early and mid-1980s, Shieh worked for O'Melveny & Myers and Gibson, Dunn & Crutcher, assisting the efforts of those firms to establish, maintain and expand a practice in the Pacific Rim. "The initiation, course, termination, and aftermath of those associations are the subject of two prior civil actions brought by Plaintiff: A. Shieh v. Michael Newman, et al., LASC case No. NEC53509 (Appeal pending: 2nd Civil No. B059327) . . . and L.C. Shieh, et al. v. David I Thompson, et al., LASC Case No. NEC 54381 (Appeal pending: 2d Civil No. B064714)[4]."

Once again, Shieh alleges the defendants "determined to stamp out a nettlesome competitor in the Pacific Rim . . . region of the legal services

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[4]As noted ante, the orders of dismissal were affirmed in Shieh v. Newman (B059327, Sept. 16, 1992) and Hsieh v. Thompson (B064714), Feb. 1, 1993).

industry," himself. The defendants entertained personal enmity against him and the firms exchanged information about him in pursuant to their common goals. The defendants repeatedly made false statements impugning Shieh's character and the quality of the legal services he provided. These statements were made to Shieh's past or present clients, those thought to be his potential clients and those associated with law firms believed to be considering or to have a professional association with Shieh. The defendants agreed to make such statements jointly and simultaneously in a manner calculated to suggest corroboration of each others' statements. They kept confidential personnel files on Shieh and disclosed private information about him to each other and to the public at large.

O'Melveny & Myers wrongfully kept clients Shieh had brought to the firm, refusing to release the client files to him. Gibson, Dunn & Crutcher did the same. These defendants knew Shieh had a contractual arrangement with another defendant, Richard Tarlow (Tarlow), Who was acting as his attorney. Defendants attempted to include Tarlow to breach his contract with Shieh. They succeeded.

On December 11, 1992, the superior court declared Shieh to be vexatious litigant in both the Christopher case and the Castellano case pursuant to Code of Civil Procedure section 391, subdivisions (b)(3) and (4), and ordered that he furnish security in the form of 2 bonds for $100,000 each for the benefit of O'Melveny & Myers and Gibson, Dunn & Crutcher jointly and for the benefit of Richard Tarlow. The action was stayed pending the furnishing of the

security, and the court issued a prefiling order pursuant to Code of Civil Procedure section 391.7 prohibiting Shieh from filing any new litigation in any court of this state without first obtaining leave of the presiding judge of the court in which he sought to file.[5]

On April 22, 1993, the superior court again declared Shieh to be a vexatious

[5]An appeal filed on May 1, 1993 was dismissed on June 17, 1993. Shieh has again appealed from orders made in these cases, filing notices of appeal in Shieh v. Christopher (BO76400, May 28, 1993; BO76762, June 3, 1993) and Say & Say v. Castellano (BO76656, June 1, 1992; BO76709, June 8, 1993). In the Christopher case, there is currently pending a motion to dismiss BO76400 for lack of jurisdiction. We have ascertained that no final judgment had been filed in this case as of June 25. Accordingly, nothing in these appeals affects the vexatious litigant order. In the Castellano case, it is impossible to ascertain the nature of the rulings from which Shieh's all-encompassing notices purport to appeal.

litigant in the Castellano case upon the motion of another defendant, Ivy Yuen. The court ordered Shieh to furnish security by posting a bond for $100,000 and stayed the action until the security was furnished; additionally, Shieh was ordered to show cause on June 3 why the action should not be dismissed as to Ms. Yuen if the security had not been furnished by that time. Finally, the court scheduled for hearing on May 24 the motion of defendant Household Bank for a similar order. Shieh failed to appear on the latter date, and was adjudged in contempt; a bench warrant currently is outstanding for Shieh. This court recently entertained and denied a petition for a writ of mandate based on these orders (Shieh v. Superior Court (Castellano) (B076637, July 7, 1993), denied July 15, 1993) and another challenging all vexatious litigant

orders in both the Christopher and the Castellano cases (Shieh v. Superior Court (Castellano and Christopher) (B076677, July 8, 1993), denied July 15, 1993).

In an order dated February 26, 1993, Judge Ted Millard of the Orange County Superior Court, sitting by assignment, heard challenges to Judge Edward Y. Kakita in the Christopher and Castellano cases, as well as a third case. Judge Millard also declared Shieh to be a vexatious litigant, noting he was waging a "campaign of litigation terror," and District Court Judge Dickran Tevrizian likewise had declared Shieh vexatious. That order is final.

In Say & Say v. Layman, Supra, Shieh alleged attorney Francisca Araiza (Araiza) and Say & Say had an oral agreement under which Araiza would render legal services as assigned by

Shieh. Araiza breached the agreement, mishandled cases and cooperated with other defendants to steal files and other property belonging to Say & Say. Additionally, she sent disparaging letters to Shieh's clients and conspired with Imperial Savings with respect to the payment of checks drawn on a particular account. Finally, Araiza filed suit in state court and sought a preliminary injunction only as a means of harassing Say & Say and Shieh. Based on these allegations, Say & Say and Shieh purported to state causes of action for breach of contract, fraud, conversion, intentional interference with prospective economic advantage, legal malpractice, breach of fiduciary duty, trespass, invasion of privacy, intentional infliction of emotional distress, unfair competition, abuse of process, breach of the covenant of good

faith and fair dealing, violation of RICO and violation of federal civil rights. In other words, this action involves facts substantially similar to those of the instant action and other cases and recites an indistinguishable litany of grievous wrongs.

On April 16, 1992, the district court dismissed the state law claims, since they predominated substantially over the deferral claims. On April 21, the court dismissed the federal claims. On April 21, the court dismissed the federal civil rights claims on the ground that there was no state action alleged, but gave Say & Say and Shieh 10 days in which to amend their complaint. They filed no amendment, and the court dismissed the federal civil rights claims with prejudice on May 20, 1992.

On April 13, 1992, the court heard Araiza's motion to dismiss the remainder

of the action for discovery abuse and/or to compel Shieh's attendance at his deposition; another defendant's motions to dismiss, for a protective order staying or limiting discovery and for sanctions against Shieh and a third defendant's motions to dismiss for failure to state a claim and for sanctions against Shieh. On April 14, the court assessed sanctions against Shieh in the aggregate sum of $5,490.50. Plaintiffs moved for reconsideration of the imposition of sanctions; the motion was heard on June 8, 1992, as was plaintiffs' motion to dismiss the action voluntarily.

The district court denied the motion for reconsideration, dismissed the action with prejudice and, on June 18, ordered Shieh and his co-counsel, James L. Andion (Andion), to show cause why each of them should not be sanctioned

for reprehensible conduct during the course of the action. Shieh was ordered to show cause why he should not be sanctioned pursuant to Federal Rules of Civil Procedure, rule 11, for filing the complaint and why he should not be sanctioned pursuant to 28 United States Code section 1927 for filing a reply on June 2 to the opposition to the motion for reconsideration of the sanctions.

On July 21, 1992, plaintiffs sought to disqualify Judge John G. Davies. The motion for refusal was returned to the court clerk for assignment of a judge to rule on it. On July 29, 1992, Judge Gadbois denied the motion.

In an order filed September 1, 1992, the district court noted that "[b]y signing a document filed with the Court, the signator represents that after reasonable inquiry, the document is well grounded in fact and warranted by

existing law, and that it is not interposed for an improper purpose. [Citation.]" Shieh had signed the complaint, which purported to state 12 state causes of action, a RICO claim and a federal civil rights claim. However, the plaintiffs had not alleged any state action in their civil rights claim and failed to amend when given the opportunity to do so. Consequently, the civil rights claim was dismissed. Additionally, plaintiffs never filed the RICO case statement required by court order; instead, they expressed a desire to abandon that claim.

The district court concluded, "[a]n objective review of plaintiffs' complaint reveals the paucity of their federal claims. The allegations concerning civil rights and RICO are completely insufficient to support those cause of action. Plaintiffs admitted as

much by failing to amend their civil rights claim and by failing to file a RICO case statement. Thus, plaintiffs' complaint was not well grounded in fact nor warranted by existing law. The complaint was frivolous and was filed in this Court to harass, and to frustrate the progress of a state court action previously filed by Ms. Araiza." Accordingly, Shieh must be sanctioned for his conduct. The court thereupon imposed sanctions of $7,500 for filing the complaint to be paid to Araiza and her attorneys within 20 days of the entry of the order.

The court additionally noted Shieh was "liable for sanctions for his involvement in the filing of Plaintiffs' Reply. The Court has inherent power to impose sanctions against both attorneys and parties for bad faith conduct in litigation. [Citation.] 'Bad faith'

means that the party or counsel acted 'vexatiously, wantonly, or for oppressive reasons.' [Citation.]" Shieh was both a named plaintiff and an attorney for the plaintiffs. His name appears as counsel on the reply, "which contains inflammatory, disparaging and uncivil remarks directed at both the parties interested in this action and the Court. The Court finds that the Plaintiffs' Reply was filed in bad faith and for vexatious reasons." Accordingly, the court imposed sanctions of $2,500 against Shieh for the filing of the reply. That sum was to be paid to the court clerk within 20 days of the entry of the order.[6]

In Short, the court declared Shieh to be a vexatious litigant. He had filed a groundless, wholly frivolous complaint

[6]The court also imposed sanctions of $2,500 against Andion.

with highly improper motives and had filed other documents for purely vexatious reasons.

DISCUSSION

Subdivision (b)(4) of Code of Civil Procedure section 391 defines a vexatious litigant as a person who "[h]as previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence." It is immaterial that Shieh presently is represented by counsel. (Muller v. Tanner (1969) 2 Cal.App.3d 438, 444.) As outlined ante, Shieh has been declared a vexatious litigant in the United States District Court for the Central District of California and by two separate

superior court judges in three district cases, all of which are based on facts substantially similar and make claims substantially similar to the facts asserted and claims made in the litigation underlying the Fulbright & Jaworski appeals. Hence, he clearly fits the definition of a vexatious litigant.

Moreover, since Shieh's appeals in the instant matter have been dismissed, there clearly is no likelihood he will prevail. While Shieh may receive one of the appeals partially upon timely payment of the sanctions which are the subject of the order from which he appeals, the general tenor of his conduct in the trial and appellate courts of this state demonstrates that there still will be no reasonable likelihood that he will succeed in overturning the award of sanctions.

The repeated imposition of sanctions in the trial courts and this court, the requirement that he post security in two superior court actions and the existence of other prefiling orders has had no discernible effect on Shieh's out-of-control litigation. Consequently, we have no choice but to impose our own prefiling order pursuant to Code of Civil Procedure section 391.7, subdivision (a).

The court finds that Liang-Houh Shieh is a vexatious litigant within the meaning of Code of Civil Procedure section 391, subdivision (b)(4). Ordinarily, pursuant to section 391.7, subdivision (a) of the Code of Civil Procedure, Shieh would not be permitted to file "any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the

litigation is proposed to be filed." This case, however, breaks the mold.

It is apparent from syntax, grammar, style and tone that, both in the trial courts and in this court, many -- if not most -- of the pleadings and other documents filed by Shieh or on his behalf have been written by the same person. This is the case even though Shieh has filed many of the initial pleadings in propria persona and then associated in co-counsel or substituted in a variety of replacement counsel, some of whom in turn become defendants in new litigation Shieh initiates. It is patently obvious that <u>every</u> writ petition, notice of appeal, appellant's brief and opposition to orders to show filed in this division has been drafted by the same hand, even though Shieh ostensibly has appeared in propria persona and through two separate

attorneys, Guy Rollins and James L. Andion.

In short, it is clear that Shieh does not engage attorneys as neutral assessors of his claims, bound by ethical considerations not to pursue unmeritorious or frivolous matters on behalf of a prospective client. (Cf. Taliaferro v. Hoogs (1965)236 Cal.App.2d 521, 527.) Rather, these attorneys who ostensibly "represent" Shieh serve as mere puppets. Based on these facts, we conclude a prefiling order limited to Shieh's in propria persona activities would be wholly ineffective as a means of curbing his out-of-control behavior.

Accordingly, Liang-Houh Shieh may not file any new litigation in the courts of this state, whether in propria persona or through an attorney, without first obtaining leave of the presiding judge of the court in which he proposes to

file the litigation, as provided in Code of Civil Procedure section 391.7, subdivision (b). Moreover, whether he acts in propria persona or through an attorney, before filing appeals or writ petitions in this court, Shieh must seek leave from the Administrative Presiding Justice. Disobedience of this order will be punished as a contempt of court. (Id., subd. (a).) The clerk of this court is directed to provide a copy of this opinion and order to the Judicial Counsel. (Id., subd. (d).) Copies shall also be mailed to the presiding judges and clerks of the Los Angeles, Orange and Ventura County Superior Courts and each branch of the Los Angeles County Municipal Court. Additionally, inasmuch as Shieh is an attorney, and engaging in vexatious litigation smacks of grievously unethical conduct, a copy shall be mailed to the State Bar.

Finally, we wish to provide some guidance to the trial courts. Every court has the power "[t]o compel obedience to its . . . orders . . ." (Code Civ. Proc., 28, subd. (4).) Shieh currently has outstanding in the trial courts $305,326.90 in unpaid sanctions in five separate cases. We suggest to the trial courts that it would be appropriate, upon notice and an opportunity to be heard, to consider dismissing these cases for failure to pay the sanctions.

CERTIFIED FOR PUBLICATION

SPENCER, P.J.

We concur:

ORTEGA, J.

VOGEL (Miriam A.), J.

APPENDIX K

DECLARATION OF K. HUNG

(Say & Say, a California Corporation)

I, K. Hung, declare as follows:

1. I am the President of Say & Say, a California Corporation ("Company"). This declaration is not intended to waive, but specifically reserve, the attorney-client privilege, attorney work product, privacy right and any other rights and privileges, of the Company and all of the Company's legal counsels, agents, representations, shareholders, directors and officers.

2. I have personal knowledge of the facts contained herein, and if called upon as a witness, I could and would competently testify under the law applicable to me.

3. I planned to form this Company since in or about 1990, long before any

litigation started. Attorney Francisca N. Araiza was retained as attorney for this Company and to serve as an independent lawyer to this Company. Attorney Araiza delayed the formation of the Company.

4. The Company has retained several lawyers to handle various legal matters. Mr. L. Shieh ("Dr. Shieh") is one of the several lawyers for the Company.

5. Statement about the company is Dr. Shieh's alter ego is false. Among other things:

a. Dr. Shieh and his wife do not have any ownership in this Company since the date of the incorporation of this Company. Dr. Shieh and his wife have never been a shareholder, director or officer of this Company or any company in the world.

b. Dr. Shieh, just as the Company's other lawyers, only advises

this Company on legal matters. Dr. Shieh is a lawyer, not a businessman, and does not provide any advice in business. He has absolutely no control over this Company's business. This Company is free to make any and all decisions, including, but not limited to, filing lawsuits against defendants in this action and in other actions.

c. There is no commingling funds between this Company and Dr. Shieh. Dr. Shieh is separated from this Company both in interest and personality.

d. There is no such unity of interest and ownership between Dr. Shieh and this Company that the separate personalities of the Corporation and the individual no longer exist.

e. If the acts are treated as those of this Company alone, no inequitable result will follow.

f. Dr. Shieh has never treated this Company's assets as his own, and this Company also has never treated Dr. Shieh's own assets as this Company's assets.

g. Dr. Shieh is not liable for this Company's debts.

h. Dr. Shieh has never used this Company as a mere conduit for his own business.

6. From time to time, the Company's legal counsel reports to this Company in t he United States and in Taiwan.

7. Francisca N. Araiza ("Araiza") abandoned her cases in or about June 1991. In or about July and December, 1991, as well as in or about January, 1992, defendants Andrew Castellano, Gary Hollingsworth and Wesley Rusch entered into an Agreement with this Company. They, too, suddenly abandoned their cases.

8. I have reviewed the declarations of Araiza, Hollingsworth, Castellano, Rusch, Hilda Liu, Yvonne Luu, Ivy Yeun, and other attorneys and paralegals in this Action and in other Actions. Their declarations are false, misleading and irrelevant. They were not employees of this Company or of Dr. Shieh. Araiza, in her letter to David S. Eisen, dated May 17, 1991, admitted that Yvonne Luu is her secretary. On her deposition, she stated that Yvonne Luu is a "stupid" person. Yvonne Luu should not blindly sign the declaration prepared by someone else where she knew is not true.

I declare under penalty of perjury under the law of the State of California and other applicable laws that the foregoing is true and correct.

Executed in Taiwan, Republic of China, on August 9, 1993.

K. Hung

K. Hung

APPENDIX L

NAME ADDRESS AND TELEPHONE
NUMBER OF ATTORNEY(S):

Lucien A. Schmit III
Law Office of Lucien Schmit
301 N. Lake Ave., Suite 720
Pasadena, CA 91101
(818)405-0344

ATTORNEY(S) FOR:

Plaintiff L. Shieh

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

CASE NUMBER

L. Shieh BC054981

PLAINTIFF(S)

vs

Warren Christopher, et al.

DEFENDANT(S)

SUBSTITUTION OF ATTORNEY

(Plaintiff .Defendant .Cross-Complaint
.Cross-Defendant- .Petitioner
.Respondent)

L. Shieh hereby substitutes
Lucien A. Schmit
(address) 301 N. Lake Ave., Suite 720,
Pasadena, CA 91101

(phone number) (818)405-0344 as attorney(s) of record in place and stead of Liang-Houh Shieh

Dated: October 20, 1992

Liang-Houh Shieh

_____

(Signature of Party)

I consent to the above substitution

Dated: October 20, 1992

Liang-Houh Shieh

_____

(Signature of Present Attorney)

Above substitution accepted

Dated: October 27, 1992

Lucien Schmit III

_____

PROOF OF SERVICE

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES

I am in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my address is: 301 North Lake Avenue, 7th Floor, Pasadena, CA 91101. On October 27, 1992, I served the foregoing document described as "Substitution of Attorney" on all interested parties in this action.

( ) by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
(X) by placing ( ) the original (X) a true copy thereof enclosed in sealed envelopes addressed as follows:

William Highberger, Esq.
Gibson, Dunn & Crutcher

333 S. Grand Ave.

Los Angeles, CA. 90071

Richard G. Tarlow, Esq.

Law Offices of Richard G. Tarlow

23632 Calabasas Road

Calabasas, CA. 91030

(X) BY MAIL

( ) I deposited such envelope in the mail at Pasadena, California. The envelope was mailed with postage thereon fully prepaid.

(X) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U. S. postal service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of

business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. Executed on October 2, 1992, at Pasadena, California.

( ) BY PERSONAL SERVICE I delivered such enveloped by hand to the offices of the addressee. Executed on _____, at Pasadena, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

( ) (Federal) I declare that i am employed in the office of a member of the bar of this court at whose direction the service was made.

Debbie Lin	Debbie Lin
Type or Print Name	Signature

NAME ADDRESS AND TELEPHONE
NUMBER OF ATTORNEY(S):

Lucien A. Schmit III
Law Office of Lucien Schmit
301 N. Lake Ave., Suite 720
Pasadena, CA 91101
(818)405-0344

ATTORNEY(S) FOR:

Plaintiff L. Shieh

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

CASE NUMBER

L. Shieh BC059833

PLAINTIFF(S)

vs

Warren Christopher, et al.

DEFENDANT(S)

SUBSTITUTION OF ATTORNEY

(Plaintiff .Defendant .Cross-Complaint
.Cross-Defendant- .Petitioner
.Respondent)

L. Shieh hereby substitutes
Lucien A. Schmit

(address) 301 N. Lake Ave., Suite 720, Pasadena, CA 91101
(phone number) (818)405-0344 as attorney(s) of record in place and stead of Liang-Houh Shieh

Dated: October 20, 1992

Liang-Houh Shieh

_____

(Signature of Party)

I consent to the above substitution

Dated: October 20, 1992

Liang-Houh Shieh

_____

(Signature of Present Attorney)

Above substitution accepted

Dated: October 27, 1992

Lucien Schmit III

_____

PROOF OF SERVICE

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES

I am in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my address is: 301 North Lake Avenue, 7th Floor, Pasadena, CA 91101. On October 27, 1992, I served the foregoing document described as "Substitution of Attorney" on all interested parties in this action.

( ) by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
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William Highberger, Esq.
Gibson, Dunn & Crutcher

333 S. Grand Ave.
Los Angeles, CA. 90071

Richard G. Tarlow, Esq.
Law Offices of Richard G. Tarlow
23632 Calabasas Road
Calabasas, CA. 91030

(X) BY MAIL

( ) I deposited such envelope in the mail at Pasadena, California. The envelope was mailed with postage thereon fully prepaid.

(X) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U. S. postal service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of

business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. Executed on October 2, 1992, at Pasadena, California.

( ) BY PERSONAL SERVICE I delivered such enveloped by hand to the offices of the addressee. Executed on _____, at Pasadena, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

( ) (Federal) I declare that i am employed in the office of a member of the bar of this court at whose direction the service was made.

Debbie Lin	Debbie Lin
Type or Print Name	Signature

PROOF OF SERVICE

PROOF OF SERVICE

STATE OF CALIFORNIA,

COUNTY OF LOS ANGELES

I am in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. On September 21, 1993, I served the foregoing document described as PETITION FOR WRIT OF CERTIORARI on all interested parties in this action.

( ) by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
(X) by placing ( ) the original (X) a true copy thereof enclosed in sealed envelopes addressed as follows:

1. In Say & Say and L. Shieh v. Castellano (L.A. Sup. Ct. No. BC 059833):

Andrew Castellano
1004 Arroyo Drive, No. 2
South Pasadena, CA. 91030

Gary Hollingsworth
55 S. Lake Ave., Ste. 220
Pasadena, CA. 91101

John A. Hendry
HENDRY, SERIAN, ALT & JOUANICOT
35 N. Lake Ave., Ste. 650
Pasadena, CA. 91101

Mark J. Kenney
SEVERSON & WERSON
One Embarcadero Center, 25th Fl.
San Francisco, CA. 94111

2. In L.Shieh et al. v. O'Melveny & Meyers (L.A. Sup.Ct. No BC 054981):

William Highberger
Gibson Dunn & Crutcher
333 S. Grand Ave.
Los Angeles, CA 90071

Richard Tarlow
23632 Calabasas Rd.
Suite 105
Calabasas, CA 91302

and

Clerk of California Supreme Court
300 South Spring Street
Second Floor
Los Angeles, CA. 90013

(X) By Mail

(X) I deposited such envelope in the mail at Pasadena, California.
The envelope was mailed with postage thereon fully prepaid. practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. Executed on September 21, 1993, at Pasadena, California.

( ) BY PERSONAL SERVICE I delivered such envelope by hand to the offices of the addressee. Executed on _____,

1993, at Pasadena, California.

( ) (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(X) (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Terry Pan
Type or Print Name

Signature

[c:\1\christo\s.ct\391.app.doc]jm